

From Liberal Values to Democratic Transition

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FROM LIBERAL VALUES TO DEMOCRATIC TRANSITION

Essays in Honor of János Kis

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Introduction

János Kis is exceptional in many ways. He is a subtle, imaginative and highly original political thinker; a person of great personal courage and integrity who has suffered because his ideas were thought dangerous; and a philosopher who has been himself a political leader and political force—perhaps the only distinguished philosopher in our times who has been. His intellectual history and project are of great importance not only for Eastern Europe, where his ideas were formed, but for liberal egalitarianism as a viable model for government.

Kis began his academic career in 1967, as a research assistant at the Institute of Philosophy at the Hungarian Academy of Sciences. He was a Marxist in the Lukacs tradition: a humanitarian Marxist who emphasized the importance of personal autonomy and equality. Between 1970 and 1972 he wrote a book, with György Bence and György Márkus, arguing that these Marxist ideals were incompatible with Communist political institutions: the book was suppressed—it was only published in 1992—and in 1973 Kis, as well as others who shared his views, were fired from their academic positions.

He was banned from all academic work and not permitted to leave Hungary. He supported himself translating philosophical classics into Hungarian, including works by Rousseau, Fichte and Kant. But in the mid-seventies he began to work with others in the formation of a democratic opposition to the Communist government; in 1981 he founded an underground political journal, *Beszélő*, and was its editor-in-chief until 1989. He played an active role in Hungary's transition to democracy in 1989 and 1990, and was a co-founder and first chairman of Hungary's liberal political party, the Alliance of Free Democrats. He is now a professor of political science and philosophy

at the Central European University in Budapest, and has taught at several universities in other countries, including the École des Hautes Études en Science Sociales in Paris, the New School for Social Research in New York, and, repeatedly, the New York University School of Law.

Kis's philosophical work since the mid-seventies is marked by a steady and thoughtful transition from his early humanistic Marxism to the egalitarian liberalism he now represents. The first, unpublished book he wrote with co-authors attempted what he later called an immanent critique of Marxism: he criticized Marx's institutional designs for state socialism by arguing that these could not realize, but could only subvert, what he took to be Marx's underlying humanitarian ideals. By the late seventies he had become dissatisfied with those ideals as well; in his book, *Do We Have Human Rights* (published in Budapest: AB Independent Publishers, 1985. 2nd, revised and enlarged edition: Paris: Magyar Füzetek Könyvei, 1987), he said he had come to think that the idea of basic human rights, which Marx had dismissed as an epiphenomenon of alienation, was indispensable to any concrete realization of human equality and autonomy. Kis firmly rejected the dichotomy that has appealed to so many Central European intellectuals and politicians: that rejecting Communism meant rejecting equality, and embracing an unimpeded free market and an unconstrained democratic majoritarianism.

He has also rejected a form of political pluralism that has appealed to many political philosophers: this supposes that liberty, equality and democracy are rival values that must conflict in political practice so that compromises among them are necessary. He has, on the contrary, worked with great subtlety to create conceptions of liberal equality and constitutional democracy in which these great values reinforce rather than undermine one another. His success is evident in his most recent book, *Constitutional Democracy* (published in English translation in 2003 by Central European University Press).

That book is witness to another virtue of Kis's writing. Even his most abstract political philosophy remains embedded in and addressed to the politics he knows first hand. "The studies collected in this volume," he says, "reflect political debates provoked by the transition from communism to democracy in the fatherland of its author, Hungary." I have had the luck to listen to and talk with János Kis in several countries and on several different kinds of occasions, from

formal seminars and colloquia to informal shared meals. But I remember most vividly an occasion now several years ago, when I watched him speaking to a large audience in Budapest about free speech. He said that speech must be free not only for the ideas that have won our hearts but for ideas we fear; he said that to people some of whom had suffered enormously from fascism and Stalinism in their own country and were now anxious to insure that these ideologies of tyranny not be permitted to rise again. He spoke quietly, in English, and I watched an audience that was at first hostile, gradually come to understand the force of what he said. Of course his own history of academic banishment, and his courageous underground struggle over many years against the ideas he said must not be banned now, contributed to the moral force of his argument. But what carried the day was the simple, patient logic of that argument: his personal story had disciplined his intellect, but it was intellect and not an emotional appeal that he put to work then and always.

The essays in this fine collection follow Kis's example in their careful analytical structure, and many address the great practical issues that have occupied him.

Stephen Holmes warns against a simplistic understanding of judicial independence, and against naïve assumptions that nations in transition to democracy can secure that independence when it is not in the interests of those with political power to grant it.

Frances Kamm continues her important exploration of the logic of intention in moral theory and the theory of action. Using the kind of inventive examples that have become her trademark, she contests the popular assumption that a rational agent who intends some end must also intend what he believes to be the necessary means that are in his own power to achieve that end.

Mária Ludassy's paper reports on the role of linguistic theory in the writings of Louis-Ambroise de Bonald, an ultra-Royalist conservative who wrote after the French Revolution but attracted the attention of Bonaparte and was appointed head of French higher education. De Bonald was disgusted at the vulgarity of revolutionary rhetoric, enthusiastic for separate languages expressing different cultures, and anxious to deny ordinary people the power or right to interpret scripture for themselves.

Steven Lukes considers in considerable depth the question of when and why markets are inappropriate mechanisms for the distribution

of goods, opportunities and services. He suggests that economic inequality, rather than failures in the concept of market distribution itself, is responsible for at least much of what people perceive as problematic in the use of markets.

Gyorgy Markus explores the changing understanding and role of freedom in Kant's later theory. Though Markus's argument is a highly sophisticated exegesis and critique, his underlying theme is the final importance, to Kant, of respecting universal human rights in politics.

András Sajó offers a comprehensive study of different modes and forms of political neutrality. He concludes, with Kis, that neutrality is a complex set of principles and goals rather than a single fundamental postulate, and that it is a difficult and important problem for political philosophy as well as practical politics to fix neutrality's several dimensions.

Gáspár M. Tamás offers an intriguing onomatopoeic essay on depth and difficulty. He suggests that Raskolnikov is the hero of our age, but also, much more in sympathy with Kis's ideas, that the idea of equal moral dignity is the "basic presumption of democratic greatness."

Andrew Arato builds on and expands Kis's typology of fundamental changes in political organization to study the hugely important question of how the United States and Britain, as occupying powers, might negotiate democratic institutions and structures in Iraq. He resists the wish, expressed by many of the most vehement critics of the war, that democratic initiatives fail there, which would underscore the immorality of the invasion. Though he is far from optimistic, he valiantly identifies thin threads of hope.

Timothy Garton Ash analyzes the 1989 revolutions of Central Europe. He concludes, as Kis has, that in the most successful of these, in Poland, Hungary, Germany and Czechoslovakia, what was most original lay not in the ideas that fueled the revolution, but in the conception of revolution it represented, which was marked by non-violence, negotiation, and statesmanlike compromise.

Béla Greskovits provides a careful typology and analysis of the factors that have played a role in determining how successfully each Eastern European nation has been in entering the global economy. He argues that cross-regional studies are needed accurately to identify the degree to which post-socialist development in those coun-

tries follows the pattern of late development in other parts of the world.

Will Kymlicka considers the now popular view that nationalism has been subordinated, in recent global political phenomena, to a new postnationalism and regionalism. He argues that in fact postnationalism has been suffused with ideas of nationhood and that these ideas remain powerful.

Aleksander Smolar explores the alternate and contradictory images that have been offered to model the organization of the world's peoples after the collapse of Soviet imperialism and the end of the cold war in 1989: a new world order, a world of new conflicts, a new world disorder of chaos, anarchy and disintegration, and apocalyptic visions of the end of everything. He ends, as some many essays in this collection do, on a note of fragile hope: perhaps the elimination of boundaries of time and space through technology will make people more conscious of the essential similarities of their situation and more open to co-ordination in the face of a shared fate.

Together these essays make a fine collection, worthy of the philosopher to whom they are dedicated.

Ronald Dworkin

*Part I**Liberal Values*

Judicial Independence as Ambiguous Reality and Insidious Illusion

STEPHEN HOLMES

There is no single proper model for the shape and function of the judiciary in a liberal–democratic society. The very different ways that common law and civil law systems structure relations between judges and prosecutors is just the most commonly discussed example of variation among recognizably liberal legal orders. Every known way to organize the recruitment, promotion, and disciplining of judges has its own peculiar pathologies and is susceptible to some form of serious abuse.

The coexistence of multiple competing, and invariably flawed, models for the organization of a liberal–democratic judiciary does not pose an insurmountable obstacle to domestic reformers and international development agencies seeking to promote progressive legal change. A much more serious problem is the lack of any well-established consensus about proper criteria for evaluating judicial performance. What tasks should be assigned to a well-functioning liberal–democratic judiciary? And how can we determine if these tasks are being performed adequately or inadequately?

Fifty years of experience with Technical Legal Assistance (TLA) has made painfully clear the elusiveness of simple criteria for evaluating successful legal reform. Most experts now agree, for instance, that improving the efficiency of courts (by providing more clerks, better-equipped bailiffs, better-trained court administrators, improved docket-management techniques, and so forth) has the paradoxical effect of swelling, rather than shrinking, case backlogs. This is true because of the *elasticity of demand for law*. That is to say, a “more efficient” courtroom will create an incentive for social actors to “judicialize” disputes that they would have otherwise tried to resolve extra-judicially. One reason we still lack clear criteria for

evaluating efforts at legal reform, domestic or international, is that no agreement exists in the TLA community about the inherent value of judicializing disputes that could be resolved in a non-judicial manner.

A current American example illustrates another reason why judicial performance is so difficult to evaluate, making it hard to reach consensus about the precise goals of judicial reform. The Freedom of Information Act now allows ordinary citizens of the United States to use the court system to force the government to disclose documents that had previously remained secret. This is a considerable enhancement of the power of the judiciary over executive-branch officials. The perverse and unexpected result has been that State Department operatives have increasingly come to conduct sensitive transactions with foreign governments without leaving a paper trail. This means that, when a new administration comes into office, it has a much more difficult time mastering the current state of government commitments to foreign powers. That such an enhancement of judicial power over the executive is not necessarily a benefit to democracy is the least that might be said.

Basic disagreements about the goal of judicial reform also extend to the question of “judicial independence.” Part of the problem is that a judiciary in transitional countries can become formally independent while remaining informally dependent, as when housing, security, and medical care for judges hinges on discretionary spending by the Ministry of Justice or by some other branch of government, national or local. This mock independence, in fact, is rather typical in transitional societies, where a large premium is placed on a sham accommodation to liberal norms, appreciated by Western observers, which does not seriously infringe the government’s ability to harass rivals and critics using instruments of law. It should be noted, in this context, that covertly authoritarian regimes can easily allow 80%–90% of the judiciary to act in a genuinely independent fashion, deciding cases according to conscience with no instructions from the government. This is not a problem for an ostensibly reforming but residually autocratic regime, so long as the government retains the latent capacity to channel politically sensitive cases to a handful of “reliable” judges. Indeed, the self-advertised and perfectly sincere pride of the majority of judges in their genuine independence can provide a very effective cover for still-authoritarian regimes that nev-

ertheless need to market themselves to international donor and lender organizations as well as to potential foreign investors.

But the real problem with “judicial independence,” as a guiding principle of legal reform, is that it is often more of a political slogan, popularized by the judicial guild, than a category of analysis clarifying to policy makers. The idea of “autonomy” may or may not make sense when applied by Kantians to the will of allegedly moral individuals. But the judiciary is anything but a free-floating island, loosed from all dependencies on other parts of society and polity. The unavoidable dependency of any liberal–democratic judiciary on the rest of the liberal–democratic polity is demonstrated unanswerably by the simple fact that judges’ salaries are paid, and their court-houses heated and lit, by resources extracted from taxpayers and managed by the government. To my knowledge, no advocate of “judicial independence” has seriously proposed granting to the (electorally unaccountable) judiciary an independent power to tax and spend. That is to say, no legal reformer favors judicial “independence” in a strong sense. Only a relative, moderated or selective idea of judicial independence makes sense as a goal of judicial reform.

This point can be reinforced and deepened by considering another example, namely, a case of domestic violence, where a judge sentences an abusive husband to three months in jail. He can make this decision in relative autonomy, that is to say, without paying special attention to the priorities of current political incumbents. But what happens when the convicted abusive husband gets out of jail and goes to retrieve his handgun? What has the judge done? Has he improved the life situation of the battered wife? He will only have protected her rights if the extractive branches of government are “on the same page,” that is, only if they are willing to spend public resources to build a shelter where she can retreat to safety.

What this example suggests is that the autonomy of the judge, his ability to act without coordinating his decisions with those of other branches of government, is an ambiguous good. Adjudication produces winners and losers. After the trial, the judge cannot protect the winner against the wrath of the loser. Therefore, the full function of effective adjudication in a liberal–democratic society cannot be performed by an autonomous judiciary, but only by a judiciary acting in coordination with other branches of government that, from case to case, share more or less the same agenda and the same priorities.

The widespread delusion that courts are not part of the state apparatus (and the corollary that judges are not functionaries serving in a specialized branch of the state bureaucracy) testifies to the successful self-presentation—not to say, ideological self-aggrandizement—of the judiciary, without helping us understand the nature of historically evolving dependency relations between judges, on the one hand, and politicians, bureaucrats and citizens on the other hand. Only by coming to grips with the unavoidable dependencies displayed by any liberal—democratic judiciary, can we think realistically and creatively about how to select among competing proposals for judicial reform.

The necessary dependency of the judiciary on discretionary spending by the extractive branches of government has been mistakenly overlooked in most discussions of TLA. More often taken into account is the obvious dependency of judges on choices of legislatures. Criminal law and tort law, for instance, are designed to discourage socially harmful and undesirable behavior. But who decides if a certain pattern of behavior is harmful or undesirable? What about public drunkenness? What about creating an economic monopoly? What about performing abortions? What about business lobbying of legislators? What about the use of union dues to finance political campaigns? In no democratic society can the independence of the judiciary extend to the “autonomous” definition of what is socially harmful and undesirable without reference to the public acts of the elected legislature. That is to say, the training of a judicial corps suitable to a liberal democratic society assumes, at the very least, a socialization of judges in norms of deference as well as in habits of proud independence. The challenge of a democratic transition is not to release the judiciary from all forms of dependency, but rather to re-organize its dependency, freeing judges from the clandestine and *ad hoc* will of powerful members of the executive and subordinating them to publicly known and general rules promulgated by elected representatives.

This reallocation (rather than abolition) of judicial dependency is especially difficult, of course, because abstract rules never perfectly define correct outcomes in specific cases. As a result, liberal—democratic judges always retain an element of unaccountable discretion. This perfectly feasible, indeed common, kind of “independence” is good or bad, depending on how it is used. If judges in transitional societies retain habits of deference to government officials, or ties of

friendship with them, they will be sorely tempted to use their unaccountable discretion to benefit those in power. *Hierarchy* is often contrasted with *exchange*. And judges released from hierarchical dependency, rather than embracing impartial norms of justice, may be tempted to engage in a petty trading of private advantages. And they can defend the retrograde practice by invoking self-righteously the fine-sounding slogan of “judicial independence.” What this suggests is that TLA in transitional regimes should promote jury trials or functionally equivalent techniques that interfere with the ability of members of the judicial guild to make important decisions unobserved by laymen.

In a strict or literal sense, “judicial independence” is unrealistic, while in a more modest and feasible sense, it is often undesirable or at least easy to abuse. A properly functioning liberal–democratic judiciary cannot be autistic, concerned exclusively with the perpetuation of its own corporate advantages. The resemblance of “autonomy” to non-accountability is therefore an important clue for the policy science of TLA. Lack of accountability is generally considered a vice in democratic systems of government. When appellate courts refuse to accept an appeal, they effectively extinguish a formal “right to appeal” presumably held by all individuals in the legal system. The power of the highest appellate courts, at least, to refuse appeals cannot itself be appealed—and that means: it is a legally unaccountable power. Crucial for the policy science of TLA is the general agreement of legal theorists that this feasible form of independence is, at best, a necessary evil (due to the need for closure) and not a virtue or value in itself. Proof is that, to make such a discretionary power acceptable to citizens, the judiciary must cultivate a public image of absolute integrity that does not necessarily comport with the actual behavior of real judges, but that helps make psychologically tolerable the intrinsically intolerable.

One interesting way to approach the issue of judicial independence is suggested by Alexander Hamilton in *Federalist* #72, where the institution of life tenure for judges is explained as a monopoly rent extracted by the legal guild. Well-trained lawyers may earn such high incomes in private practice that they will accept a judicial appointment only if it is accompanied by benefits not attainable through the market alone, namely social prestige and iron-clad job security, more or less independent of performance. In other words, at least one

classical theorist of liberal democracy saw judicial independence less as a noble ideal than as the fruit of effective bargaining by the well-positioned legal guild.

While not the whole story, Hamilton's story contains enough truth to be worth pondering. The ideology of judicial independence coincides suspiciously with the corporate self-interest of the judiciary. This is not a reason to reject the ideal; but it does raise some questions that need to be addressed.

"Who shall judge the judges?" To this classic question, spokesmen for the judicial guild respond: "The judges shall judge themselves." In transitional settings, judicial independence is often identified with judicial self-governance, that is to say, the transfer of administrative authority over judges from the Ministry of Justice to a Supreme Judicial Council whose members are appointed by co-optation. Self-monitoring does not have an especially happy history, however. In particular, the irremovability of politically compromised judges has been a serious problem for all transitional regimes. When judges trained and appointed under an authoritarian regime assert their right to ignore the new democratically elected authorities, appealing to "professionalism" and the separation of powers, they are paying more attention to the corporate self-interest of the judiciary than to the overall goal of liberal reform. When judges refuse external audits in the name of higher principle, executive and legislative officials may be forgiven for questioning judicial motives. That judges have private interests becomes especially obvious when they attempt to cultivate a public image of "norms in black robes."

The tendency of life tenure to protect dead wood and insulate obsolete practices and low levels of skill from market discipline reveals the ambivalence of judicial independence in a transitional setting. In a post-authoritarian regime, the judiciary is an "orphaned institution," suddenly freed from the tutelage of a now-defunct political authority, which it once approached on bent knees. Such surviving fragments of a dead authoritarian system are typically populated by sclerotic professionals wedded to old-fashioned ways of doing business. The ideology of judicial independence, if accepted unthinkingly, can be used to obstruct or postpone their re-education.

"Re-education" in this case does not mean only technical training in new branches of law. A democratic judiciary, emancipated from its servile relation to political authority, must learn to take the interests

of fellow citizens into account. It cannot keep itself immaculately aloof for overall processes of social change. A significant danger during transition, in fact, is *halfway reform*. Halfway reform occurs when the judiciary manages to free itself from authoritarianism without adapting to democracy. It can refuse orders from the executive branch without giving any particular deference to the interests of society expressed in the constitution or ordinary acts of the elected legislature. The post-authoritarian judiciary can instead work exclusively to perpetuate and augment its own corporate advantages. The private guild interest of judges can refuse all compromise with the common interest of society and, remarkably enough, can defend this recalcitrance with the language of liberalism. The ideology of judicial independence is all too often invoked to legitimate just such a halfway reform, which appears as “professionalism without a social conscience.” To avoid such autistic corporatism, disguised as liberal orthodoxy and increasingly common in transitional regimes, should be, but is still not, one of the main objectives of TLA.

Democracies have a very difficult time asserting political control over any body of experts with robust norms of corporate solidarity and mutual succor. Doctors cannot be made legally accountable for their negligent acts, for instance, without the cooperation of doctors. (This is why most medical misbehavior is never registered by the legal system.) In general, corporations of experts can be forced to respect general social interests only if whistle-blowers are permitted to thrive. But most flourishing expert guilds manage to institutionalize no-promotion rules and other informal means to discourage insider whistle-blowers. This is how corporations insulate themselves from effective external monitoring. That this is just as true of judges as of doctors goes without saying. Here then is an important principle for guiding judicial reform in transitional regimes: the promotion of judicial independence should always be accompanied by provisions to reward and protect whistle blowers inside the judiciary itself.

To approach the problem of “judicial independence” without misleading illusions, it will be helpful, very briefly, to rehearse a few of the historical sources of the practice in Western legal theory and practice. The most historical important point to make is this: pre-liberal political systems employed law and the entire judicial apparatus (including judges) as a tool of domination. Rule by law or rule through law, characteristic of autocracy, requires *dependent judges* in

the sense of judges willing to apply or ignore established law depending on the momentary interests of the ruling power. Rule by law allows the government to bind its subjects to rules rigged in the government's general advantage while exempting the government itself from following its own laws in cases where applying them literally would harm its interests.

Rule of law differs from rule by law because of the way the former makes the behavior of government officials themselves in some measure predictable. What this all-important distinction suggests is that power wielders are willing to introduce "judicial independence" (in a feasible sense) when they find it in their interest to render their own behavior to a certain degree predictable. In general, power is willing to make itself predictable when, by so doing, it can mobilize useful cooperation from resourceful social actors for achieving important political goals.

Political power will voluntarily embrace judicial independence not when incumbents are converted to vague liberal–democratic norms of civilized behavior but when they come to believe that governability can be enhanced by judicial independence. This simple principle does not tell the whole story (which is immensely complex, as all students of legal history know). But it does provide a useful *fil conducteur* for understanding why what we call "the rule of law" emerged in the West. This should presumably help us identify the conditions under which TLA can promote the emergence and consolidation of similar systems in post-authoritarian regimes.

Historically, the relative autonomy of the judiciary emerged when power wielders found that it was in their interest to jettison certain burdens that created resentments without creating loyalty. Justice is resented by those who lose in court; while those who win in court feel that they deserve their victory and owe nothing in particular to the judge. Thus, early modern princes, in search of deniability (that is, wanting to hide their faces while managing ticklish disputes between troublesome social forces), gave some real elements of independence to judges, while retaining for themselves the power to pardon, which (unlike the power to do justice) did seemingly generate gratitude and loyalty.

This *extremely stylized* account of the origins of judicial independence (derived from Machiavelli) is not meant as potted history. Rather it is meant to serve as an attention-riveting guide to the pol-

icy science of TLA. It should help us keep the following consideration in mind. Judicial independence will be a sham, meant to deceive the eye of foreign observers, unless it serves the political interests of ruling powers. To introduce judicial independence in a real sense—rather than as a mere window-dressing meant to deceive foreign visitors—requires the designers and managers of legal reform efforts to understand and adapt to the short-term and long-term interests of a society's most powerful political and economic forces. Imposing a formula for judicial reform from the outside, relying on “conditionality” and the force of example, without mobilizing an effective domestic political coalition to support and sustain it, is hopeless. This is the cardinal sin of TLA as it is practiced today. The kind of judicial independence characteristic of liberal democratic societies can never be introduced or maintained unless supported by a powerful coalition of domestic political forces. That should be Rule No. 1 of TLA.

A politically effective constituency for judicial independence is by no means a spontaneous fruit of any and every society. In transitional regimes, for instance, wielders of political power often assume that their capacity to govern depends on their ability to inject uncertainty into the lives of their subjects. They believe, not without reason, that subjects who have no idea what is going to happen to them next are easier to govern than citizens secure in their rights and expectations. Once ordinary people feel secure in their property rights, for instance, they may begin to use their property as a platform from which to attack the government, to expose its incompetence and even, perhaps, to publicize its criminality. To destabilize its critics, therefore, incumbents in so-called transitional regimes, even when they pay lip-service to the rule of law, are nevertheless driven to destabilize property rights as well. To have a realistic chance of obstructing such proclivities and promoting legal reform in such a setting, TLA must understand why ruling elites typically fear the predictable implementation of known rules by semi-independent agents. These fears must be addressed, and to some extent alleviated, for judicial reform to have any chance of success.

To approach TLA in the proper frame of mind, foreign and domestic exponents of judicial reform need to accept the basic truth that judicial independence will never be introduced in a society with a powerful political coalition behind it, will never be consolidated

unless it serves to some extent the perceived self-interest of ruling groups. That is how it came about in the West, and there is no reason to think it can emerge otherwise elsewhere. To view the special utility of law to well-organized and well-positioned political and social forces as a dishonorable “taint” may be morally understandable, but it is also a political folly. In any case, although the interests of the powerful have, throughout history, usually been in conflict with the interests of a great majority of ordinary citizens, this does not have to be the case. For example, if the government can more easily win voluntary social cooperation by submitting the actions of its own executive agencies (in the period between elections) to judicial review, then the interests of incumbents and the interests of citizens may converge on some form of judicial independence. There is very little chance that a liberal reform of the judiciary will gather steam in any society where the government does not need the voluntary cooperation of its citizens to achieve its most pressing goals. Attempts to introduce judicial independence and other organizational components of the rule of law in rentier states, for instance, where the government’s direct physical control of natural resources (oil, diamonds, etc.) with a high price on world markets frees it from the need to consult with its own subjects, are doomed to fail, no matter how well they are designed.

Shrinking the jurisdiction of military courts is a non-controversially liberal reform. But it has an interestingly ambiguous relation to judicial independence. While they are tools of governance, military courts are not tools of self-governance, that is to say, they are designed to be insulated from public opinion. This suggests, against much current orthodoxy, that a liberal reform of the judiciary must expose judges to some form of democratic accountability, or at least make judges indirectly responsive to legitimate social demands.

No liberal–democratic judiciary can function properly if it is genuinely independent from the aspirations and interests of the society in which it operates. In any case, the court’s own legitimacy depends on a basic desire of major social forces to resolve conflicts without violence. Where important social actors prefer to resolve their conflicts by means of violence, outside of state institutions, the judiciary is correspondingly side-lined. This judicial dependency cannot be decreased by giving judges better training or higher salaries.

Many courts throughout the world function as tax-payer funded and government-managed debt collection agencies. In other words, judges are tools of creditors as well as being tools of political rulers. This is the reality behind the Marxist view that law in capitalist society is basically a large machine designed to help rich people keep their money. Such an analysis may sound unbearably crude to a public nourished on the pieties of human rights, but it contains an element of truth and may well have a healthily bracing effect on TLA.

What sort of society is likely to support a realistically achievable and politically desirable form of judicial independence? Once answer is: a society of potential buyers and sellers, creditors and debtors, employers and employees. Or rather: a society where the beneficiaries of a free market economy are politically dominant. An impartial judiciary, assigned the task of adjudicating disputes about property and making contracts more reliable, can play a useful role in encouraging economic exchange. If it also devotes itself to defending property owners against those malefactors who steal or damage property, the judiciary will no doubt be backed by a powerful coalition of the wealthy. This backing will take the form not of vague sympathy but of regular funding. To call such a judiciary “independent” may seem facetious to Marxists. But if the judiciary did not serve the interests of well-organized social forces, these forces would not go to court, but would resolve their conflicts outside the legal system. Moreover, a liberal judiciary, which lures well-organized social forces to resolve their conflicts inside the institutions of the state, must be genuinely independent in at least a limited sense. When a controversy arises, a judge must be able to resolve the issues in question without blatant favoritism, and certainly without taking a bribe from one of the parties to the case. Because the judiciary in a democratic society lacks electoral legitimacy, it must behave with at least some measure of fairness in order to stimulate regular compliance with its decisions. To support “the reliance interest” on which market economies depend, judges must strive to enforce publicly articulated principles in a manner generally predictable by all parties. This excludes case-by-case partisanship, without at all excluding a bias in favor of owners and against those who disrespect ownership.

Recognition that legal reform will never succeed unless it serves the palpable interests of powerful political and economic actors is not cynical. Rather, it is an instruction: if you want legal reform—

including an appropriate measure of judicial independence—to succeed, mobilize the domestic coalitions to support it. Do not rely upon the “demonstration effect” of Western models to convert political and economic elites in transition countries to judicial independence. Mimicry will produce façade reform, not real reform.

Democracy does not exist, but degrees of democratization do. A society becomes more democratic if more citizens become routinely able to use legal instruments to protect their vital interests. It is becoming less democratic, if fewer and fewer citizens manage to use legal instruments to protect their interests. This is the proper context in which to understand the claim that legal reform will never succeed unless it obtains support from well-organized political and economic forces. A society in which all power is concentrated in the hands of a few will have a legal system, including a judiciary, serving the interests of a few. A society where power is broadly dispersed and shared by many different social forces is much more likely to have a legal system, including a judiciary, that acts with the broader interests of the community in mind. The law is always a tool, but it can be either the tool of a compact few or the tool of a highly diverse many. Only a society where many diverse social groups are able to defend their interests outside the law will be a society where many diverse social groups can defend their interests by means of law. Legal reform is therefore inseparable from the democratic development of the polity and civil society.

In any case, the idea that legal reform can be imposed from the outside (say, by the World Bank), without regard to the domestic array of forces prevailing in a society, is an illusion. One source of this illusion is the self-presentation of Western judges, who sometimes speak as if the judiciary has the ability to impose its own solutions on society by means of its own inherent power. That is to say, the illusion of judicial independence in the West is to some extent responsible for the poor design and management of TLA aimed at establishing judicial independence in transitional regimes. A more subtle appreciation of the ambiguous realities and insidious illusions of judicial independence is the first step toward helping transitional regimes pursue and consolidate liberal legal reform.

Why a Rational Agent Need Not Intend the Means to His End

FRANCES M. KAMM

It is commonly thought that if a rational agent intends an end and believes that his doing some thing is a means necessary to that end, then insofar as he is rational, he is required to intend that means to his end. Call this The Claim. It is the part of practical reason referred to as instrumental rationality. It is taken to be a normative requirement, or even an analytic truth by some.¹ I shall argue that The Claim is not true. A rational agent, insofar as he is rational, is not required to intend what he believes (even correctly) are the means necessary to his intended end. He can continue to intend the end without intending means he believes necessary to it. It has been said that “most philosophers think it is both uncontroversial and unproblematic that practical reason requires us to take the means to our ends.”² I shall argue that “take” should not be understood to imply “intend.”

I

Suppose an agent intends an end x , and that he believes (correctly) that z is a means necessary to this end. Nothing can be substituted for z . The means necessary to an end is (or are) something an agent must do or omit to do if the end is to come about. (Rather than keep on repeating “means necessary to his end,” I shall assume this is meant by “the means.” This is by contrast with there being alternative possible means of achieving the end. If I speak of “a means,” I shall be referring to one of the things necessary for achieving an end, rather than one of alternative possible ways of achieving an end.) The means is not just whatever must occur in order for an end

to come about. No one thinks an agent, insofar as he is rational, must intend everything that he believes must occur, but not as a result of his acts, in order that his end come about. Suppose, for example, I know that lightning must strike someone if my end is to be achieved, and this will happen unavoidably regardless of what I do, allowing me to pursue my end. This does not mean that I must intend that lightning strike insofar as I am a rational agent. Furthermore, the means is not *by definition* something an agent must intend to do or omit to do if his end is to come about. If that were how means were defined, in saying "an agent must intend the means to his end," we would be saying "an agent must intend the things that he must intend to do or omit to do for his end" and that would be redundant.³

Suppose that the agent is forbidden to intend z for either moral or nonmoral considerations. Let us consider each of these categories. The Doctrine of Double Effect (DDE) is a principle in moral theory accepted by many that says it is morally wrong to intend evil as a means to a good end, even when the good to be achieved is greater and the evil smaller, but permissible to pursue the same end by neutral or good means, even though we foresee that the same lesser evil will certainly occur as a side effect. (The DDE assumes that just because we foresee that an effect will certainly occur, this does not mean we intend it. I think this is correct. For example, I may know that if I drink alcohol to raise my spirits, this will definitely give me a hangover tomorrow. That does not mean that I intend the hangover.) Abiding by the DDE could be the moral reason why one may not intend z as a means to x . A nonmoral reason why it would be impermissible to intend z as a means is that it is very expensive given that all we would achieve with it is x .

Let us assume that for either of these two reasons, the agent will refuse to intentionally bring about z in order to bring about x . Does this mean that the agent, insofar as he is rational, must give up intending x ? I do not think so.

For suppose this agent also intends another goal, y , and z is a side effect either of the means to y or of the achievement of y itself. So long as y is a greater good and z a lesser evil, it is permissible according to the DDE for z to occur as a side effect of pursuing y . Alternatively, imagine that y is such an important goal that it (if not x) is worth bearing the great nonmoral cost of z as a side effect. In

both these cases, it is permissible for the agent to do what brings z about as a side effect. The important point is that if the agent knows that he will bring z about in pursuit of y , he can continue to intend x . Evidence that the agent does intend x (not merely wants it to occur) is that once he knows he will bring about z as a side effect of pursuit of y , he may intentionally bring about something else (m) that is also physically necessary in order to produce x , in addition to z .

Consider a specific example. Suppose I want to build a private home and I must create a hole in plot A in order to do this. However, creating the hole is too expensive just to build my house, so I must not aim to do it. However, I receive a contract to build an apartment complex on plot B next to A. In order to clear the land for the apartment complex, I must unavoidably use explosives that make a hole in plot B but as an unintended side effect also create a hole in plot A. The hole in plot A is an undesirable side effect from the point of view of building on B, since it makes it harder for me to move materials to B, but it is a tolerable cost relative to the goal of building on B. Given that I will produce the hole in plot A as a side effect, I can still pursue my goal of building my home. I do everything else (e.g., buying bricks) that I must do to build my house in order to build it.

In the case where z is a moral evil, the DDE does not rule out making use of side effects of our acts whose occurrence we did not intend. It does not exclude an evil (z) causing a good (x) which is not needed to justify the existence of that evil, as the evil's existence is already justified by y . For example, suppose it is permissible to bomb a munitions factory in wartime, even though some children will die as a side effect of the exploding factory but it is impermissible to aim at the deaths of the children, even in order to bring their warring parents out into the open so that we may attack them. If we know the children will die as a side effect of the permissible bombing, it is permissible to arrange to attack the parents when, as we know, they will come out from hiding to bury their children.

Further evidence that the agent does not intend z is that if there were a way to bring about y without producing z as a side effect, he would do so, consistent with taking advantage of his causing z as a side effect. Suppose there were two ways to bring about y , one with z as a side effect and one without. For example, bombing the muni-

tions plant with or without killing children, or clearing plot B with or without making a hole in A. It would be consistent with taking advantage of z as a side effect for the agent not to choose the route to y that causes z , for if he did, he would be intending z . For example, if equally good explosives that did not cause a hole in A were available, the agent would be committed to using them, given that he must not spend more than is necessary to construct the apartment. The fact that he should bring y about without z if he could implies that he would, *in those circumstances*, have to stop intending x . This, however, does not show that, in the circumstances where z is unavoidably a side effect, he does not actually intend x .

I conclude that in the case I have described, a rational agent insofar as he is rational need not intend—may even refuse to intend—what he believes are the means to an end he still intends. He may intend x , know that his bringing z about is necessary for x to come about, but not intend z . *The reason this is possible is that while it is true that if an agent intends an end, then insofar as he is rational, he must be willing to bring about what he believes are the means to it, he need not intend to bring about the means in order for him to bring about the means.* As noted above, it is recognized that a rational agent need not (and often cannot) intend things that he knows are necessary for his end if they will occur in any case independent of him; my claim is that he also need not intend and may refuse to intend things that he knows are necessary for his end even if they will occur only if he brings them about.⁴

Another slightly different way of putting this point is that while he must bring about the means if (i.e., in order *that*) his end will occur, he need not bring about the means in order *to* bring about his end. He must do z in order *that* x come about, but he need not do z for the purpose of bringing x about.

To take account of my objection to The Claim, we could revise it to say: If an agent intends an end, then insofar as he is rational, he must intend the means to his end *if intending them is necessary to bring about his end, but not otherwise*. Call this Claim*. Claim* is compatible with the claim that in order for an agent to be intending an end at all rather than just wanting it to come about and producing it, it is necessary that he be willing to bring about at least some of the things that will produce his end *in order to* bring (i.e., for the purpose of bringing) about the end. (Call this Claim**.) This amounts

to saying he must be willing to intend a means, though he need not actually intend any means because all of them may be provided without his intending to bring them about. Notice that these means may not be means in the sense of what is necessary to produce the end, since he may only have to be willing to bring about one of a set of alternatives (each of which can help produce the end) *in order to* bring about the end. That is, Claim** says there must be something he is willing to intend to do or omit in order to bring about his end if he is to have an end. However, he need not intend or be willing to intend all or even any of the required means (i.e., intend something if it is a means in the sense of being necessary to his end) unless this is necessary to bring about the end. (An implication of this is that where doing *z* is both necessary and the only thing that is sufficient in order that *x* occur, the agent must be willing to intend *z* on pain of only wanting and producing, but not intending, *x*.) Claim* and Claim** may be constitutive of instrumental rationality rather than The Claim.)

II

A philosopher who has defended something like The Claim is Christine Korsgaard (in “The Normativity of Instrumental Reason”). She begins (as noted above) by discussing the claim that “practical reason requires us to take the means to our ends” (p. 215). She then says: “the instrumental principle ... says that *if* you will an end, you must be prepared to take the means” (p. 237). Finally, she cites Kant’s claim: “whoever wills the end wills (insofar as reason has decisive influence on his actions) also the means” (p. 235). (She says that these claims could only be true if the agent knows what the means are. Let us assume this.)

Putting together these three versions of the instrumental principle suggests that she believes “take the means” is equivalent to “will the means.” “Will” in “will the means” should have the same meaning as “will” in “will the end.” She says: “Suppose someone claims that she wills an end; she asserts that all things considered, she has decided to pursue this end” (p. 236). Hence, I conclude that for Korsgaard, to will the means is to decide to pursue the means. In sum, Korsgaard seems to believe that the instrumental principle claims: if I decide to

pursue an end, I decide to pursue the means to the end (insofar as reason has decisive influence on my actions and I know what the means are). Let us assume the means are whatever I must do (or omit) to bring about my end. Then she would seem to believe that the instrumental principle says: If I decide to pursue an end, *I decide to pursue the thing I must do to bring about my end* (insofar as reason has decisive influence on my action and I know what the means are).

What I have said implies that this is not true. I need not decide to pursue the things I must do to bring about my end, if I decide to pursue an end anymore than I need intend those means. This is so if I know that I will do the things I must to bring about my end without deciding to pursue them. Consider my house example. I do not decide to pursue the making of a hole on plot A, and in particular, I do not decide to pursue the making of a hole on plot A in order to build my private house. Yet I do decide to pursue as an end building my private house, and I know making the hole on plot A is a means to my end. Let me expand on this point.

It might be said that I do decide to pursue the hole in A *as a sign* of there being a hole in B. After all, if there can be no hole in B without, as a side effect, the hole in A, then if there is no hole in A, this is a sign that there is no hole in B, and I intend a hole in B. But there are several objections to this argument. First, if “pursue” is to have the same meaning in “pursue an end” and “pursue a means,” I must decide to pursue the hole in A as more than a sign of a hole in B. Second, it is certainly *not* true that if I decide to pursue an end (my private house), I must decide to pursue a means to that end as a sign of the success of *another* end (building the apartment house). Third, it is not true that if I decide to pursue an end, I must decide to pursue the signs of *that* end coming about.

Korsgaard says some very strong things in support of the instrumental principle. Consider the following selection of what she says: (1) “To will an end just is to will to cause or realize the end, hence to will to take the means to the end. This is the sense in which the principle is analytic. The instrumental principle is *constitutive* of an act of the will. If you do not follow it, you are not willing the end at all” (p. 244); (2) “So, willing an end is equivalent to *committing yourself*, first personally, to taking the means to that end. In willing an end, just as Kant says, your causality—*the use of means*—is already

thought. What is constitutive of willing the end is not the outward act of actually taking the means but rather the inward, volitional act of prescribing the end along with the means it requires to yourself" (p. 245); (3) "A commitment to taking the means is what makes a difference between willing an end and merely wishing for it or wanting it or thinking that it would be nice if it were realized" (p. 252); (4) "And if I am to constitute *myself* as the cause of an end, then I must be able to distinguish between *my* causing the end and some desire or impulse that is "in me" causing my body to act" (p. 247); and (5) "[A] person who does not conform to the instrumental principle becomes a mere location for the play of desires and impulses, the field of their battle for dominance over the body through which they seek satisfaction" (p. 254).

Contrary to (1), I claim that in my House Case, I do will the end of building my private house, but I do not will to take a necessary means to the end. Contrary to (4) and (5), in the House Case, I do cause the end, not some impulse in me causing my body to act.

However, much of what Korsgaard wishes to say could be said about Claim**, which may be constitutive to being a willing agent and hence the true version of the instrumental principle. For according to Claim**, I do not decide to pursue an end at all rather than merely wish for it (as (3) says) unless I am willing to intend at least *one* of the means to it. However, as I have said above, I need only be willing to intend (i.e., be willing to will). Also, the sense of "means" that makes this true is not "things it is necessary that I do for my end." This is because I can decide to pursue my end by deciding to pursue something that is one of a set of ways of producing my end. This crucial distinction can be made by attending to two parts of selection (2) from Korsgaard. It may be true that "in willing an end, just as Kant says, your causality—the use of means—is already thought," if we interpret "means" in the sense of *some* ways of producing your end and "thought" in the sense of willing to intend. But this is not the same as "prescribing the end along with the means it requires," if prescribing the means implies willing them and "the means it requires" are *all* the things that it is *necessary* for you to do for the end to come about.

III

The case I discussed as a counterexample to The Claim involves an agent having two goals, x and y . Now I wish to present a counterexample to The Claim involving an agent who has only one goal x , the means to which are p and q . Suppose that one is prohibited from intending q for moral reasons (e.g., it is a lesser evil that one is prohibited by the DDE from intending as a means). Alternatively, suppose there are nonmoral reasons for not intending q (e.g., it is too costly given that our end is x). However, if one does p , this has q as a side effect.

There are two versions of this type of case. In one type of case, p , which leads to q , is a *very* great good and q is a lesser evil. In that case, even though p is *not intended as any more than a means* to x (the good that is our goal), it might, I suggest, still justify the agent in causing q as a side effect. The DDE as standardly interpreted implies that if we intend a greater good *as a goal*, not merely as a means, we may cause lesser evil as a side effect. Here I am contemplating a revision to the DDE that seems plausible to me. It says that if a greater good will occur though we do not intend it as any more than a means, it can justify the lesser evil which is its side effect.⁵

In this sort of case, even if x does not occur, q (the lesser evil or great cost) will be justified by p 's occurrence. Thus, if it is impermissible to intend q as a means to x because it is a lesser evil or it is merely too costly to use q for x , I may still intend p as a means to x and it (under the revised DDE) will justify the lesser evil q (or compensate for the cost of q).

In the second case in which the agent's only goal is x , p is not itself a greater good that could justify the lesser evil (or costly) q , independently of x .⁶ Despite this difference between the cases, it is true *in both of them* that a knowledgeable agent does p (given that he sees it as a means to x) *because* he believes it will lead to q . If he did not believe it would lead (at least with some probability) to q , he could not reasonably believe that he would achieve x (his goal) by doing p . Hence, he would not do p unless he believed it could lead to q ; if he believed his doing p could not cause q , he would not do p . He does p in order to bring about x because p can lead to q . By contrast, in the cases discussed in Section I, the agent does something in order to bring about y (his goal of the big apartment house) and would do it

even if z (the hole in A) did not occur (and hence x [his goal of a private home] would not occur).

As an example of these types of cases, suppose we bomb a munitions plant in wartime as a means (p) to stopping a war (x). We foresee that the munitions plant blowing up will cause the death of some children as a side effect. We also know that our causing the death of the children is another necessary condition (q) for the end of the war.⁷ That is, we must cause the nation to lose both munitions and civilians in order that it surrenders. Hence, if the deaths did not occur, there would be no point in bombing the munitions plants. The DDE, however, rules out our acting with the intention that the children be killed. Nevertheless we proceed to bomb the munitions plant in order to stop the war *because* the children will also die.

I claim that doing p in order to produce x because q will happen does not show that we intend q , which must also occur in order that x come about.⁸ We can do p because q will occur but not in order to produce q . Even if it would be wrong to aim at the deaths of the children as a means of ending the war, this could not be raised as an objection to dropping the bomb on the munitions factory in my case because the children will die.⁹ Hence, a rational agent, insofar as he is rational, may permissibly cause, but need not intend or be willing to intend, an evil that is a means (something he must do) to his end, even when that means is necessary to produce the very end whose coming about is necessary to justify bringing about this evil. (By contrast, in Section I, I considered cases in which some end, y , justified the existence of an evil that was not a means to y , it was rather a means to another goal x whose coming about was not itself necessary to justify z .)

Here is some evidence that a rational agent, insofar as he is rational, need not intend an evil q , even though he does p to bring about x only because q will occur. Suppose some additional act or omission becomes necessary in order that q come about as an effect of p . The agent, insofar as he is rational, would not be committed to bringing about the connection, even if he had no objection to doing so other than that he refuses to do something with the aim of bringing about q . He could, consistent with doing p because q occurs, refuse to do anything at all to bring about his goal x if he had to establish the connection between p and q . For example, in the Bombing Case, he could refuse to make it the case that his bombs are ones

that also cause the children's deaths. This is so even though using bombs that do not cause the children's deaths would be pointless since the war cannot be won by destroying the munitions plant alone.

We now see that in addition to intending a means and merely foreseeing its occurrence (illustrated in the cases in Section I), we may act as we do only *because* we will also produce a means. The DDE contrasts the intention/mere foresight relation to an event. It is because there is yet another relation that an agent can have to some event he causes—acting *because* it will occur but still not intending its occurrence—that I have suggested that we speak of the Doctrine of *Triple Effect*.¹⁰ In these cases as well, the rational agent need not intend the means to his end.

I have claimed that a rational agent, insofar as he is rational, can do *p because* he will produce *q*, and hence refuse to do *p* if *q* did not result, and yet need not intend *q*. This would also show that a test which is commonly used to determine whether someone intends something (as a means or goal), the Counterfactual Test, is inadequate. The Counterfactual Test says that we can show that someone intends to produce *q* by doing *p*, if he would refuse to do *p* if *q* did not result. But, I have argued, if one does *p because q* will come about if one does *p*, one can refuse to do *p* if *q* will not occur, without this showing that one intends that *q* occur. Hence, the Counterfactual Test mistakenly attributes an intention when none need be present.¹¹

Notes

1 For example, Kant says "Whoever wills the end wills also (so far as reason decides his conduct) the means in his power which are indispensably necessary thereto." This proposition is, as regards the volition, analytical. (*Fundamental Principles of the Metaphysic of Morals*, trans. T. K. Abbott, Loughton: Prometheus Books, 1987).

2 Christine Korsgaard, "The Normativity of Instrumental Reason," in *Ethics and Practical Reason*, eds. G. Cullity and B. Gaut (New York: Oxford University Press, 1997), 215.

3 If "means to his end" were "things that the agent must intend to do or omit to do for his end," we should say: If an agent intends an end, then insofar as he is rational, he must *have* means (i.e., things the agent intends to do for his end). I discuss this possibility below, 5.

4 John Broome, in "Normative Requirements" (read at the Conference on Moral

Theory, La Lavandue, France, June 1999), claims that it is correct reasoning to derive the intention of fetching the corkscrew from your existing intention to open the wine and your belief that in order to open the wine, you must fetch the corkscrew (p. 7). What I have said denies this. His argument for his claim is based on a comparison with theoretical reasoning. Suppose I believe “Frances will open the wine,” and “In order for Frances to open the wine, Frances must fetch the corkscrew.” Insofar as I am rational, I will then believe “Frances will fetch the corkscrew.” This is because the conclusion is derivable from the premises, and insofar as I am rational and I have the attitude of belief toward the premises, I should have the attitude of belief toward the conclusion. I agree with this. But Broome goes on to claim that “[t]he difference between the theoretical and practical reasoning is not in the propositions that constitute their content, but in the attitude you take towards these propositions. ... Because the conclusion is true if the premises are true; you cannot rationally set yourself (if you are Frances) to make the first premise true, and take the second as true without setting yourself to make the conclusion true. Your attitude towards the premises normatively requires you to set yourself to make the conclusion true. It requires you to intend it” (p. 7). Broome moves between using “setting yourself to” and “intending,” but I think this makes no real difference if what I have argued is correct. For the following is an implication of what I have argued: the fact that in Broome’s case, if the premises are true, the conclusion must be true does not necessarily determine that a rational agent, insofar as he is rational, must have the same attitude to the conclusion that he has to the first premise. I do not have to intend, or set myself to, make the conclusion true, though I intend or set myself to make the first premise true, and believe the second premise, so long as I believe that I will make the conclusion true, even without intending, or setting myself, to make it true. For example, suppose I believe that I will, as a side effect of bringing in a tray of dessert, bring in a corkscrew that you have placed on it. Then I need not intend to bring in the corkscrew—indeed, I might refuse to make any minimal extra effort necessary to get a corkscrew—consistent with my intending to open the wine and my belief that having the corkscrew is necessary for this.

- 5 I have suggested an even more substantial revision of the DDE: A greater good that is unintended can justify a lesser evil. See “The Doctrine of Triple Effect and Why a Rational Agent Need Not Intend the Means to His End,” *Proceedings of the Aristotelian Society*, 2000.
- 6 In discussing the second of these two cases, I shall not question the DDE’s view that it is permissible for a means that is not itself a greater good to cause a lesser evil as a side effect, so long as the goal is a greater good. I do question the correctness of this aspect of the DDE in *Morality, Mortality, Vol. II* (New York: Oxford University Press, 1996), in “Nonconsequentialism” in *Blackwell’s Guide to Ethical Theory*, ed. Hugh LaFollette (Oxford: Blackwell, 1999), and in “Toward the Essence of Nonconsequentialism,” in *Fact and Value: Essays for Judith Thomson*, ed. A. Byrne et al. (Cambridge, Mass.: MIT Press, 2001).
- 7 This particular case was first put to me for consideration by Thomas Nagel in 1999. I discuss similar cases in *Morality, Mortality, Vol. II*.

8 I first suggested this in *Morality, Mortality, Vol. II*.

9 This does not mean that I think there is no objection to bombing in this case. One way to show the DDE is not adequate as a principle of permissible conduct is to show that we do not intend the children's death and yet the bombing is wrong.

10 For more on this doctrine, see "The Doctrine of Triple Effect and Why a Rational Agent Need Not Intend the Means to His End." For criticism of the doctrine of triple effect and an alternative to it, see "Toward the Essence of Nonconsequentialism."

11 For more on this, see "The Doctrine of Triple Effect and Why a Rational Agent Need Not Intend the Means to His End."

*Language and Order:
De Bonald's Theory of Language
as a Paradigm
of Traditionalist Political Philosophy*

MÁRIA LUDASSY

Louis-Ambroise de Bonald (1754–1840) was a highly influential ideologist of the French Restoration who combined the most traditionalist elements available at the time, a Tomistic account of natural law, ultramontane Catholicism and intransigent royalism, to construct his traditionalist political philosophy. His style was certainly no equal to Burke's or de Maistre's pre-romantic diatribes, poetic imagery and rhetoric feats. De Bonald's thoroughly pre-modern political theory remains, however, modern in one single respect. He adapted the philosophy of language he had learnt from Herder and Humboldt during the years of emigration for the purposes of his philosophy of history and society. By doing so, he introduced a new argument or indeed an entirely new type of argument into the area of anti-liberalism and the critique of individualism and human rights.

His first work (the full title was: *Théorie du pouvoir politique et religieux dans la société civile, démontrée par le raisonnement et par l'histoire*), which appeared in 1796, a year after Joseph de Maistre's *Considerations on France* and Edmund Burke's *Letters on a Regicide Peace*, was met with unexpected success. The book originally written to cater to the tastes of the ultra-royalists, i.e., the ultras in emigration, found its way to Bonaparte during his Italian campaign. The young general greatly admired the work. In fact, his former liberal philosopher friends and supporters (the "Ideologists," i.e., Destutt de Tracy, Volney, Cabanis) attributed the anti-liberal and authoritarian turn of Bonaparte, who was soon to become the First Consul, to the impact of this very book. Unlike other royalist ultras, de Bonald did not have to wait until the Restoration to be permitted to return home. During the years of the Empire he was appointed as the head of French higher education which enabled him to spread his authori-

tarian views. His motto was *Non est potestas nisi a Deo*, i.e., here is no power but from God.

The problem of language is mentioned in two key passages of the *Théorie*'s argumentation against individual liberties. At this point, however, the problem of language is not yet presented as the paradigm of individual submission, only as a criticism of the "natural" norm advocated by Enlightenment thinkers and as part of the objections to humanist universalism and the rhetoric of "general humanity." De Bonald attacks the theory of a state of nature and of natural rights with arguments similar to those advanced in Burke's *Reflections*: returning to a "pure" natural norm would amount to abandoning (or violently destroying) all historical and social achievements and civilizational developments. In other words, the slogan of "back to nature!" only takes us back to barbarism. This is illustrated, among others, by the decline of French due to revolutionary egalitarianism including the obligatory use of the informal voice and the spread of vulgarity which many tried to disguise as a democratic feature: "Language itself has sensed the imminent approach of the revolution. In vain have some good writers tried to fight the decline the original cause of which was exposed to us in time. French, Fénelon's, Racine's, Bossuet's and Buffon's language; a language simple but without vulgarity, noble but never grandeloquent, well-sounding and never exhaustible, never imprecise, careful but never stilted, metaphorical but never affected, this true expressive vehicle of perfected nature has become raw, uneducated, court, wild, exaggerating. This is because, as they say, *language was to become as reasoned, spirited, forceful and picturesque as nature herself*" (*Théorie*, part 1, book 1, ch. 11).

While, according to de Bonald, the norm of nature amounts to an annihilation of civilizational achievements, the hybris of the faith in the self-perfecting capacity of men symbolizes the Fall of revolting humanity. The individual is venturing on the greatest imaginable blasphemy when striving for the divine knowledge of the distinction between Good and Evil, when besieging the Heavens with his intellectual work and when seeking to divinize humankind (the clearest manifestation of which is the declaration of human rights). But the vain belief in the infinite potential of self-perfectioning is met with divine retribution ever since the Babelian chaos of languages. "Today as always I emphasize that," so writes de Bonald "the multiplicity of

languages creates *the greatest obstacle to completing the work of faithlessness and conceit*. I would add here that the party of philosophers has always sought to put an end to the plurality of languages in order to bring its work to perfection. It has tried to spread the language of the learned all over Europe, the language in which its work has been most fully developed. Every people has to preserve its own language since every language meets the needs of the people that speaks that language" (*Théorie*, part 2, book 1, ch. 5).

Against Condorcet's mathematical and universalized ideal of language, de Bonald advocates Herder's ideal of national language rooted in national history and popular culture and the tangible means of unreflected emotions against the abstract generality of rational reflection. This latter point also forms one of the most important tenets of Burke's *Reflection*. Contrary to the English author, however, de Bonald believes that the philosophy of Enlightenment cannot be reduced to mere destruction (to the demolition of "polished" society and of the age of "chivalry"). The Enlightenment can also be observed to postulate, de Bonald argued, a new set of values characteristic of secular humanism. This, he claimed, was the truly threatening new *Weltanschauung*. "Nevertheless, philosophy did not rest content with destruction, it also wanted to replace what it destroyed. It put abstractions in place of reality. For those wielding power it exchanged religion with the cult of *reason*, for the people it exchanged the fear of power with respect for the *law*. And for all people it replaced Christian charity and the love of fellow humanity with I do not know what kind of philosophical philanthropy" (*Théorie*, part 2, book 1, ch. 11).

The language of philosophy is critical reflection, the idiom of free debate that excludes the principle of a single valid interpretation of the Law and the Scriptures. But that constitutes the essence of political and religious power. "Nor is it true that the right of interpreting the Scriptures would be left to common believers without further limitations as in Calvinism. The power of the individual in religion is just as limited as it is limited in political society..." (*Théorie*, part 2, book 3, ch. 11). Only one person can speak in the name of the Law or in the name of the Scriptures—this is the essence of French monarchy and Roman Catholicism. All others are to keep silent, especially women, children, and the common people as such, the people who are to remain in conditions of childish simple-mindedness.

In de Bonald's view, giving the people the ability to write and to participate in public discourse was the most egregious deed of the revolution (comparable only to legalizing divorce which allowed wives to dispose of impotent or cruel husbands just the way sovereign people were permitted to get rid of an impotent or cruel ruler). His *Théorie de l'éducation* was published as an appendix to the *Théorie de pouvoir* recasting the favourite subject-matter of the Enlightenment, the theory of education, in traditionalist and authoritarian terms. The materialist educational scheme based on mere sensory impressions cannot account for the complexity of human beings (de Bonald's targets here are Condillac and Helvétius and not Rousseau or Condorcet who were themselves critical of the sensualist conception which sought to reduce human beings to sensory impressions). This theory tries to explain differences in national character by referring to differential physical and geographical conditions, rather than to historical and social reasons. In addition, it traces back social differences to the material domain rather than the spiritual sphere. It assumes that all classes are to be addressed in the same language and that equal education will also make equal.

And yet "the people, i.e., those who pursue mechanical activities all day, will remain forever in the condition of infancy: they only have hearts and can only operate their senses. Their spirit is incapable of regarding the objects of human knowledge. This is why it is not possible, nor is it necessary to tire them with such learning. For half-digested knowledge, erroneously and vaguely understood half-truths, which they are unable to express, are responsible for the individual's disgrace and society's misfortune. The understanding of the people is to be constituted by its emotions. These emotions are to be governed and the people's heart is to be shaped, not its intellect" (*Théorie*, part 3, book 1, section 1, ch. 2).

Catechism is people's religion and morality: words repeated without thinking about them, deeds followed without any prior reflection. Just as it does not ponder the words of its mother tongue before learning them. To teach more to common people is more than a sin, it is an error: they will just be made unhappy by their surplus of knowledge. They have to remain manual laborers. Social discontent will only increase if mass mobility is set in motion: the aristocracy of the spirit will crave to replace the aristocracy of the sword. With their interpretation of the Scriptures, men of letters lacking divine authorization

will usurp the rights of the anointed (*Théorie*, part 3, book 2, section 3. ch. 7). "The basic creed of this sect is the unrestricted freedom of the press and the unconditional tolerance of opinion" (*ibid*). The morality of commercialized societies corresponds to the philosophy of the freedom of speech: as many rights as individual interests, society and all human relationships are based on words and free contracts, the only measure of value (and source of authority) is the economy, the principle of production for consumption and consumption for production (*Théorie*, part 3, book 2, section 4. ch. 1).

In de Bonald's view, this image of society is even more apocalyptic than Jacobinical dictatorship. He puts forward at the turn of the century his *Analytical study of the natural laws of social order* (*Essai analytique sur les lois naturelles de l'ordre social, ou du pouvoir, du ministre et du sujet dans la société*) with the intention of opposing this image. In this work, the relationship of language and thought, speech and writing is no longer set out merely as a random illustration of the natural science of humans "born in subordination" and "living in society and only for society," but rather as a fundamental paradigm of the historical and social determination of human beings. The philosophical image of man inventing language and writing in an autonomous fashion is paralleled by the atheistic vision of God as a human invention (An invention by whom?—de Bonald asks). Inventing God to "scare himself and others as if by a scarecrow" (*Essai*, ch. 2) just as it "created polity by playing with words, which, similarly to commercial joint ventures, is nothing but a contingent association of people. An association voluntarily formed in the belief that by jointly shaping their interests they could establish social interest. Just as they merge their financial concerns in the hope of profit so they treat people's existence as their wealth (leur être comme leur avoir)" (*Essai*, p. 51). This conception of creationism (i.e., that human beings freely create themselves and society on the basis of a rational negotiation of interest) is confronted by de Bonald with an equally radical notion of man as *natura naturata*. Human beings are not able to create anything. Their conceptual thought and ability of speech as well as, most importantly, the very existence of language is direct proof of the createdness of human beings and of the pre-determining power of God.

De Bonald's proof of God resembles a version of the ontological proof of God in Descartes' *Discourse*. The notion of an eternal, infi-

nite, perfect etc. being and the string of sounds signifying this notion can be found in the human mind and in human language. If the notion itself was not pre-existent, then this word would indeed be no more than a string of sounds, and “if people did not associate the notion of eternity, infinity and power to this string of sounds, then the uttering of these sounds amongst civilized people would not differ from uttering it amongst savages.” The word would lose its value in another society as foreign currency is worthless in a different country. (*Essai*, ch. 2, p. 52)

De Bonald’s great *trouvaille* consists, however, in studying the mediating role of society as a part of his analysis of the (divine) gift of language and the emergence of speech. “The other eminent, and possibly most important, proof of the existence of an intellect superior to humans is the argument based on the language usage of human beings. The great achievement of modern metaphysics is to have shown that people need signs in order to be able to think, that they need words in order to be able to speak. In other words, *people have conceived of their speech prior to uttering their thoughts*” (*Essai*, ch. 2, p. 53). This is demonstrated, according to de Bonald, by the difficulty of expressing in a foreign language our thoughts that we think in our mother tongue. “It follows from this,” de Bonald continues “that human beings are not able to invent signs since they could not invent them without previously having thought of them. But they are not able to think lacking a prior knowledge of signs” (*Essai*, ch. 2, p. 55). Philosophy cannot break out of the apparent vicious circle of thought and language, language use and thought-concepts that all mutually presuppose one another. Introducing the Creator solves this problem, or which is the same, makes it irrelevant: “the Creator has communicated the elements of language to human beings leaving to society its development. In other words, the Creator created humans as speaking social beings.” Endowing humans with the faculty of speech does not serve immanent, purely human goals but rather mediates the divine will: “God in order to acquaint humans with his will could not disrupt the working of laws which are also the products of his will. Similarly, communication between God and humans is only possible on the basis of laws that correspond to human nature... God, therefore, made humans speak and write so that he could teach them. And indeed, what means would be more appropriate to human nature than mediating through language?” (*Essai*, ch. 3, p. 65).

Miracles in the everyday sense of the world are, therefore, avoided as much as possible because their manifestation is usually individualized. Miracles serve to enlighten humankind as a whole through one person's singular testimony. This, de Bonald notes in the manner of Enlightenment thinkers, opens the door wide to cheaters and self-appointed prophets. Nor is it acceptable for God to communicate his commands individually to every man. This could be the source of all kinds of heresy, particularly Protestant subjectivism. This is because individuals could claim to be undecivable if their own inner inspiration could indeed be the repository of divine law: "The assumption that God has communicated his general will to every individual through special inspiration leaves society defenceless against bigotry and enthusiasts telling tales of personal visions, i.e., against profit-seekers who deliberately concoct these falsifications. Since it is based on private judgement, personal inspiration as an individual means cannot serve as a strict rule for society. This is what has ruined Protestant societies. Instead of relying on the word of visible and audible authority, these have made the insecurity of sects rooted in personal inspiration and private sentiments into the general law of society, the forever changing particular into a general and constant rule" (*Essai*, p. 68). This leads directly to the subjectivist myth about moral sentiment and about the putative moral law in the depth of our hearts. This myth, however, negates not only all transcendently-based normativity but also all kinds of intersubjectivity "since every man is his own judge as to what is written in the depth of his heart." How could society judge the actions of its members if these could always invoke the authority of infallible intuitions? By the same token, the state could not enforce its punitive measures, if it communicated its regulations by means of instructions whispered into the ears of citizens rather than by means of publicly revealed laws.

According to de Bonald, the authors Condillac and Helvetius—Locke's French disciples—even took the doctrine of moral sentiment to a further stage. By recognizing only the reality of momentary sensory impressions, they created an absolutely private language. A private language which cannot even ensure communication between our recent sensations and current impressions (Diderot had already discovered this argument in his refutation of Helvetius thirty years earlier). Just as it is impossible to correct statements such as "I can now see something purple" according to sensualist authors, it is in

principle impossible to correct the tenet of Rousseau's Vicar of Savoy "what I feel to be good, is really good, what I feel to be bad, is really bad" (while de Bonard does not fail to add that fatherly sentiments have of course not been so deeply ingrained in the heart of the author in question...). "The moral imperative ingrained in the depth of one's heart may be a well-sounding phrase in poetic declamations, but the working of society cannot be based on a metaphor. Catholicism grasps human society's interest much clearer since it refrains from referring every individual to his private sensations and personal inspiration. *It even forbids listening to the words of an angel*, should these be contrary to divine revelation and the words of the Scriptures thereby not corresponding to the will of the Supreme Being which is always revealed publicly to society as a whole" (*Essai*, p. 70).

The unambiguity of divine revelation presupposes that it be communicated by a single Being but this single Being can neither be a mere human being nor a direct divine declaration. *The mediator is God-man*, the only one who can address every human being in God's name. "One being speaks and all others listen" constitutes the paradigm of not only the religious world but also that of political order "since it is natural in the order of communication created by God that only *one* person should speak and all others should remain silent, that one person should command and all others obey. Only the powers that be can use the imperative, subjects can only listen to its commands" (*Essai*, p. 77).

In de Bonald's view, the language of the Northern (Germanic) peoples expresses most clearly the commanding logic of the "man of power": "these languages have preserved the naïve simplicity of the language of ancient times and the wisdom of a primitive constitution in contrast to the artificiality of the Romans' language which was corrupted by the artificial patchwork of democratic institutions." Modern parliamentarism is tantamount to the rebirth of the Babelian confusion of languages: all have a right to speak and all want to add something at the same time. "I am almost ashamed to state such a simple truth: the basic institution of a democratic state is the continuous speech of speakers. But in the end, only one person can propose a law that is accepted by the others. This is because if two people simultaneously propose that law, then by physical necessity no one will understand it. Consequently, the floor has to be denied to

one so that it can be given to the other.” But contrary to honorable theocracies, in parliamentary democracies there is no fixed rule to settle this choice. Pure chance will determine who is in a position to speak and who will legislate. “A legislative assembly is, therefore, literally a lottery of power where winning resolutions are drawn in a random fashion” (*Essai*, ch. 3, p. 88). There are no longer substantive laws here, regulations rooted in divine commands, only the human word, contracts established by subjective whim which go up into thin air should the private interest creating them happen to change. Legal procedures are particularly important in the parliamentary system: legislation itself is “nothing but the regulation of the forms of legislation” (*Essai*, p. 107).

The essence of divinely-authorized power is constancy, it is eternal and unchanging. Its fundamental law is valid “quod semper ubique et ab omnibus.” There are no local variants and it does not recognize individual differences: “divine revelation has to reach every human being unchanged and independently from time and space because this revelation acquaints human beings with all their knowledge about the world and all the duties they owe to fellow human beings. Therefore, God gave an unchanged, eternal and universal form to his words through the Scriptures which is nothing but speech fixed forever and is always and everywhere identical for every human being” (*Essai*, ch. 4, p. 120).

Prior to the emergence of modern democracies, every legislator traced back its positive laws to some text that claims to be of immediate divine origin. The divine stigma of these writings is established by the fact that the date of their wording goes back to the obscurity of ancient times as well as by their infinite wisdom that regulates the laws of society and the duties of human beings. Every community has had anointed speakers of God’s command, but the ability to understand speech and to use language is a universal human privilege. “Just as it is necessary that the divine revelation should reach every human being by the assistance of those few who are capable of communicating it so it is necessary that human beings receive the ability of speech from God. This ability is no less miraculous than the gift of writing.” The universal character of God’s command can only be reflected in alphabetic writing that can represent conceptual thought. Such writing presupposes a high level of civilization: “I am not speaking of ideographic writing called hieroglyph which is just

the symbolic image of objects and which is the manner of writing common to peoples still in their infancy. I am speaking rather of concept-writing which is the writing of the Phoenicians and the Hebrews, i.e., the achievement of civilized peoples. This is writing that records sounds while it is addressed at the eye, thus turning thought into substance" (*Essai*, ch. 4, p. 124).

Traditional societies were based on oral tradition, laws passed on by collective memory. By contrast, the life of civilized peoples is based on divine commands incorporated by the Scriptures. Modern, contract-based societies rest on a principle that, according to de Bonald, is bound to subvert every community, namely private interest. These societies seek to create associations on the basis of egoism that can only increase isolation. They want to turn the "infinitely divisive principle" of individuality into the foundation of social relations. "God only talks to human beings about dependence and not about freedom. More precisely, the true freedom of human beings lies in their subjection," de Bonald writes. Divine commands always refer to duties concerning God, fellow humans, religion and society but never to rights. The God given gift of sociability creates a duty, the biological fact of individuality leads into temptation. Compassion rooted in individual sensitivity is not a virtue but rather a kind of feminine weakness. By contrast, Christian charity is a duty and a force capable of shaping society.

Condorcet, by having emphasized the primacy of individual rights, subverts every human society: "human beings do not have rights in a society, but only *duties*," de Bonald writes in one of his commentaries.¹ There is even one aspect of the declaration of human rights that de Bonald agrees with, namely its transferring legal discussions from the obscurity of private convictions to the public domain. "The law, as this famous declaration says, is the free and general statement of the general will. But the authors of this notorious pronouncement have understood the declaration of rights and general will to mean the collective will and personal rights of a plurality of individuals, that is the popular will. But this is imperfect just as individual human beings are. It is even more imperfect since it emerges from the plurality of people under the impact of interests and passions..." (*Essai*, ch. 4, p. 16).

Even Jean-Jacques Rousseau admitted that will cannot be communicated and hence cannot be represented, although he failed to rec-

ognize the divine stigma in the attributes of unity and indivisibility (*Essai*, ch. 5). The claim that “the repository of sovereignty is the people” is an *ex definitione*, i.e., definitional absurdity since it contains the nonsensical (self-contradictory) proposition that “the subject is power” (*Essai*, ch. 6, p. 208). This is similar to the confused expression “citoyen” which is the result of the abolition of ranks and applies without distinction to everyone, that is to say, to no one in a definite manner (*ibid*). By contrast, names in a “well-organized society” are *per definitionem* family names: “the eternity of mankind is called heritage” (*Essai*, ch. 6., p. 197).

Burke already calls the individual an “autumn fly,” but for de Bonald the individual is even less. There is no human life outside the family (while of course *corporations* can replace the family in the case of priests, civil servants, and soldiers). Individual existence is non-existence. “The use of inherited names is the main source of racial and national patriotism” in very traditional society. Only modernity seeks to replace ranks and names through individual affection for the purposes of structuring families: “in the family, where they could not completely destroy the principle of inheritance, they have dissolved it into its constituent parts. Solid family bonds were replaced by marital affection, fatherly love and filial gratitude” (*Essai*, p. 220).

Traditional power has extended family relations to include social corporations, whereas modernity has narrowed down these relations even more to exclude everything but individuality. Families are defined by fixed ranks, individuals by personal talent. This constitutes the dangerous combustion engine of social mobility: “Talent seeks to *act*, but in a well-conceived state one only has to preserve: seeking to act is synonymous with revolutionizing” (*Essai*, p. 247). The individual who regards himself as free wants to renew everything turning social estates into the aggregation of individuals, replacing orders of professions by floating individuality unconnected to corporations. Individuality even subverts language—the repository of inheritance and continuity—through the renewal of language. But this renewal amounts in fact to the corruption of language through the discarding of traditional convictions and indications of rank and the enforcement of neologisms alien to the nation.

The doctrine on the freedom of thought and opinion is such a neologism that dispenses with all external control of objectionable

ideas. But there are no self-contained thoughts. We cannot think our thoughts without linguistic expression, but language is a *par excellence* social product (that is, a God given gift since God has made human nature to be sociable). Society is entitled, therefore, to control it (and as it was mentioned in connection with de Bonald's criticism of Condorcet: human beings have no rights within or without society, and especially not against society). "Those dangerous texts which seek to explicate thinking beings as thinking beings... even though the speaking being is the explanation of the thinking being given that language is the expression and image of thinking. Language is nothing but exteriorized thought" (*Essai*, p. 252). But whatever has been made external, is already a social issue. If there was a human being who could only express his own sensory impressions, then his private language would indeed not refer to anybody or anything else. Thus he could even be "free."

Human beings as language users are, however, inseparably bound to their ancestors. By using language they learn all what the ancients have accumulated in terms of knowledge, respect, authority and tradition. "*Languages constitute the true archives of the human race.*" Neither in animals nor in humans regarded as mere physical bodies can we detect an explanation for the necessity of language, whereas a definition of a thinking and sociable being would not be complete without the ability and necessity of communication. "The fact that we cannot speak without thinking, that is without associating concepts with our words, and the fact that we cannot think without speaking, that is without attaching linguistic signs to our concepts is the most fundamental evidence in favor of the definition of humans as societal beings" (*Essai*, ch. 6, p. 263).

Condorcet in defining the exercise of human rights as the basic attribute of "all beings capable of thought and the formation of moral ideals" has only forgotten that both the ability of speech and the origin of moral ideals presuppose a social context, hence at least the use of language. This cannot be a "natural" characteristic of every individual human being, a talent prior to the existence of society. On de Bonald's view, the question concerning the origin of moral ideals, i.e., how children acquire the ability to use such words as "good," "duty," etc., suffices in itself to rebut both the model of language-acquisition put forward by associationist psychology (Condillac) and the individualistic aprioritism of Cartesian rationalism (Condorcet).

The latter would oblige teachers to justify the meaning and rules of usage of every word to every single child by means of rational argumentation. But the rationality of the vocabulary and grammatic rules of a language cannot be "proven" in any given language. To show why a certain string of sounds corresponds to the word "good" can only be explained by recourse to the history, tradition and etymology of that language and certainly not by means of mathematical proof in a "claire et distincte," Cartesian fashion.

More precisely, mathematical analogy is applicable in one respect only: the child who cannot comprehend the truth that "a straight line is the shortest distance between two points," does not require further explanation but rather therapeutic assistance. "One has to abandon teaching mathematics to these weak-minded children" (*Essai*, p. 275), just as the deaf-mute are not able to hear the divine word and the blind are not able to perceive the harmonic order of the universe. The notion of God, Order, Duty and mathematical definitions are not individually but rather socially "aprioristic." A single individual living outside social and linguistic bonds will never be able to discover them. "No matter how natural the knowledge of these truths is, lacking an adequate manner of expression they would remain forever unknown to a human being, if he did not enter into social relations with other human beings and did not acquire the appropriate linguistic formulations by becoming part of a social tradition or family legacy. This tradition or legacy is handed down from generation to generation, while the family passes on the development of the faculty of speech and the indestructible writing as the inheritance of nations" (*Essai*, p. 301).

The struggle against prejudices conducted by Enlightenment thinkers seeks to disrupt this continuity and civilizatory chain of inheritance. While Burke said that "we praise our prejudices because they are prejudices," de Bonald adds that we ourselves, our culture, society and our knowledge are nothing but prejudices passed on from generation to generation by means of language. This can never be the object of free inquiry, as Condorcet would like to have it, because that would destroy all morality, the essence of which is constituted by unreflected identification. "Moral requirements are for the people prejudices acquired during one's childhood... Language itself is nothing but a prejudice which we acquire without any previous examination. In fact, we do so before the ability of examining would have

itself emerged.”² Prejudices are handed down with the mother tongue and in the mother tongue. The critical examination of these prejudices is not only dangerous but *stricto sensu* impossible since we have no option but to use our mother tongue in reviewing our prejudices that are formed in our mother tongue. In other words, we would first have to smash the instrument with which to purify our minds from false beliefs.

“Prejudice is a social product” writes de Bonald, hence fighting against prejudice is anti-social. But since the medium of prejudice is language, he adds, we (would) first have to destroy language in order to realize Condorcet’s dream, a prejudice-free public instruction. “Prejudice is the greatest, and possibly the only form of teaching the people”—it is no coincidence that Enlightenment thinkers tended rather to speak of instruction: “The greatest error of the last century was to have emphasized the importance of intellectual training rather than that of moral teaching, to have sought to strengthen critical thought rather than religious dogma, to have stressed the priority of humanity, always that of the individual human being and not that of society” (*ibid*). But since the destruction of the linguistic forms of religious “prejudices” which preserve society can only be effected by means of language (in speaking or writing), the conservative force embodied by language must ultimately prevail. As a result, the restauration of the old order is not only a necessity of history and political philosophy, but also a self-evident truth of language philosophy.

After the Restauration de Bonald could continue to wage his war on liberal individualism from the position of the main censor, both on the pages of two conservative papers, the *Conservateur* and the *Defenseur*, and in Parliament. His main themes remained the same: the need to emphasize the priority of (religious) education as opposed to (enlightening) instruction, while he never forgot to stress the paradigm of traditions, authority, religious principles and prejudices being incorporated in language. “Prejudice is knowledge acquired in an unchanged form which we receive from society after our birth and which is passed on through teaching. This is contrary to knowledge based solely on the authority of our own reason that is transmitted by education. If a generation were suddenly to lose the faculty of speech, all subsequent generations would be mute. By the same token, if religious education of a people were to be abandoned

for twenty years, the next generation would be atheistic”³ This appears to contradict to some extent de Bonald’s thesis that the notions of perfection, infinity and omnipotence were inculcated directly in our minds by God. More precisely, de Bonald’s argument just cited would only be tenable if by forbidding the use of words one could also prevent the formation of the pertaining concepts. The essence of religious education as opposed to instruction, which is necessarily pluralistic, consists in inculcating into childrens’ minds—and even more into their hearts free of prior reflection—the articles of faith contained in the one and indivisible, and in principle, indubitable catechism (which therefore can be regarded as nearly infallible). “The basis of upbringing is, to use a Greek expression, called catechism. In regard to the catechism I have to repeat again and again my basic principle, namely that it is to be one and the same always and everywhere. The content of the teaching is to be uniform all over the entire kingdom. Unity! Unity! Unity!”

This view presupposes a centralized interpretation of the holy books and calls for, contrary to the Protestant conception, withholding the text of the Scriptures from common believers. This should be so because a solitary reader could lapse into heretic interpretations. It is best if the majority cannot even read because this reduces the temptation of individual interpretations. “Teaching religion consists in formally suppressing all forms of individuality and supplanting personal taste and private opinions. It is to emphasize the exclusive nature of duties and the need to sacrifice all private forms of expression in favour of the general services to be rendered.”⁴

One book, one interpretation, unified indoctrination of the public—this conception amounts to an all-out denial of the philosophers’ views that call for religious tolerance and a pluralistic public education. De Bonald discovered Comte’s infamous argument against freedom of opinion: “Natural sciences do not tolerate error. So how could perfect tolerance be allowed in matters of morality?”⁵ Truth is not *mesothes*, the golden medium, as is virtue, so it cannot tolerate error and cannot recognize plurality as a virtue.

Calling for freedom of thought is in any case absurd. Not even God can hinder freedom of thought. Speech, by contrast, presupposes a social context. It is, therefore, society’s right and duty to restrict it. “The question of tolerance is almost always put forward as a pun. Those calling for freedom of thought ask for something hardly less

nonsensical than those calling for freedom of blood circulation. Not even God can prevent man from thinking whatever he wants to. But what our Sophists understand by freedom of thought is the freedom of thought pronounced, that is the freedom of published thoughts, the freedom of public speech and written publications which includes the struggle against other thoughts. Since to speak and to write is tantamount to social action, and among civilized nations, tantamount to the most important of all human action, freedom of thought would entail complete freedom of action. But how can any government be required to be completely tolerant of unlimited freedom of action? ...A false opinion needs to be tolerant since it has no basis for re-proving other opinions. But truth calls for exclusivity. A true opinion is necessarily intolerant of contradictory opinions.”⁶

De Bonald cannot seek to provide, however, a substantive definition of what the true opinion may consist of since this would itself amount to heresy or Protestantism. All he can strive for is a procedural definition of truth, or to put it more precisely, a procedural definition of who is to define truth. De Maistre found this in papal infallibility, while de Bonald in the tradition delineated through decisions taken by oecumenical councils. By destroying this tradition the Voltairean *Écrasez l'Infâme!* does not only threaten to devastate Christian civilization, but the whole system of human history constituted by authority, tradition, superindividual patterns of habit and unreflected linguistic structures. “Similarly to the declaration of human rights, the word ‘freedom’ and the declaration of the independence of intellectuals amounts to a denial of all social authority. This led to bloody religious wars in the sixteenth century and to even bloodier revolutions in the seventeenth.” Citizens, addressing each other in the informal voice, butcher one another under the flag of Tolerance and Liberty. By contrast, subjects who see themselves as born into subordination and who obey authority do not interpret the duty of Christian *caritas*, but rather abide by the commands of the Scriptures.⁷

The main philosophical work of the 1810s, *Démonstration philosophique du Principe constitutif de la Société*, offers a monographic summary of de Bonald’s ideas on the philosophy of language and social theory. This summary character is responsible for the frequent repetitions—probably also reflecting a didactic intent on the author’s part—as well as the shifts of emphasis achieved through a series of

minor modifications. The introduction, in addition to engaging in what amounts to a ritual critique of eighteenth-century philosophy, also speaks out against the growing influence of eclectic philosophy and Kantianism dominating universities of the time: "For eclectic philosophers the object as well as the subject of their thoughts are themselves. They do not philosophize about anything but their own thoughts. Their philosophy is the philosophy of 'I.' This 'I' is a constantly recurring motif of their writings. The favorite subject-matter of their scientific inquiries is the study of their own *consciousness*..." (*Démonstration*, Introduction, p. 426). They create a self-legislating autonomy, ultimate authority and creative power on the basis of this consciousness. De Bonald, however, "proves by means of language that the original transmission of language would be impossible without hypothesizing a being the existence of which is prior to human beings and is necessarily superior to them" (*Démonstration*, Introduction, p. 427). The contrary hypothesis is the assumption of naturalistic evolutionarism according to which "owing to favorable circumstances human beings have developed as purely natural beings. First they were lemons on sunlit landscapes, then they lived as algae in wet areas, then they became insects, then fish, then quadrupeds and then bipeds. On the basis of this hypothesis, it is easy then to conceive of humans inventing their own language." As de Bonald sees it, "the idea of humans inventing their own language is absolute nonsense since humans cannot even arrive at the thought of invention without language and cannot even think their own thoughts in the absence of signs" (*ibid*). This is the proof of the "original transmission of language," i.e., the proof of the divine origins of language, and at the same time the refutation of the evolutionary principle. If a human being cannot even arrive at formulating its own thoughts on its own, it will even less be able to impart the necessity of communication to fellow human beings without being able to make meaningful utterances in the first place. Hence "in the final analysis the invention of speech necessarily presupposes speech itself" (*Démonstration*, Introduction, p. 428).

The deaf-mute lack concepts precisely because they do not possess the signs and strings of sounds capable of expressing those concepts. In short, "they are mute because they are deaf." Just as a child will remain mute if nobody talks to him, humankind as a whole would remain mute if God's hand did not ensure a *preestablibita harmonia*

between inner speech and exteriorized thought: “The necessity of inner speech, i.e., that of thoughts in order to express ourselves and to render our thoughts capable of sensory perception, on the one hand, as well as the necessity of vocal expression, i.e., that of external speech in order to express our thoughts and to make them perceptible to fellow human beings, on the other, go to show that uttering our thoughts requires thinking about what is said” (*Démonstration*, Introduction, p. 428). This interdependence—or vicious circle if we choose to look at it in a formal and logical manner—can only be resolved by means of divine intervention through the mystery of Word-made-flesh or thought-made-speech.

The two hypotheses, i.e., the speech development of humans created as sociable beings, on the one hand, and the necessary sociability of beings endowed with the faculty of speech, on the other, are of equal rank on de Bonald’s account. Both prove the impossibility of “thought without linguistic expression,” that is “the necessity of the original transmission of language.” The philosophical postulate of free-floating individuality is refuted day by day in light of “the continuous transmission of language for every participant of social life.” Moreover, it can also be observed that anyone who is excluded from this linguistic continuity will never be able to think and to express his thoughts. “I have been looking for universal human traits and the constant and eternal characteristics of particular nations, the unchanging features of every human society... and finally I have found the expression of these social laws and characteristics in the most familiar forms of linguistic usage. Likewise, I have found the fundamental types and interpretations of our most general concepts in the rules of language usage” (*Démonstration*, Introduction, p. 437).

The basic law of language usage is that it is only possible in a social context: the autogenesis of the “free” spirit and the jigsaw puzzle of sensory impressions in associationalist psychology will never bring us to understand human communication. Consequently, the most powerful criticism of methodological individualism comes from the theory of language: “This is true applied social philosophy. Modern philosophical schools, whether they are materialists or eclecticians, are philosophies of the individual human being, philosophies of ‘I.’” I want to put forward a philosophy of social beings, the philosophy of “We.” Only the philosophy of “We” is correct. It is capable of representing human beings as thinking and speaking, i.e., as social beings

in their existence which cannot be comprehended outside of society” and thus outside the set of rules constituting language and the communicative framework established by the community. “Society is man’s only, what’s more, society is man’s only true nature” de Bonald wrote in an article on the language of politics.⁸

The definition of society as a necessity of nature is opposed to a definition of society as based on free contract. The latter envisions the development of “family, religious and political communities” analogously to “commercial associations and joint ventures” and regards the language that forms the basis of this verbal agreement as conventional, i.e., as the product of the arbitrary decision of individuals. By doing so, it portrays social organization and political power as a mechanism which can be and which should be recreated by every generation and *stricto sensu* at the birth of every individual. The civilizatory achievements of previous generations are annihilated in this process or are only accidentally preserved. The very use of language would have to be discovered or at least regulated anew for every new generation (in Condorcet’s case for every newborn baby) in order to respect freedom of choice. For de Bonald the individual’s participation in society is as little the matter of free choice as the application of the rules governing his linguistic competence. Outside social bonds, life is just as impossible as any speech-act. “Human beings as intelligences are helped by their faculties and become part of society by virtue of their communication with fellow human beings. The organic expression of their intelligence, i.e., the faculty of speech itself constitutes sociability as well as the ability to improve oneself. The use of language and communication is the ability passed on by every human being to his children as he received this ability from his parents. Handed down from one generation to the next, this ability can be traced back to the first family which in turn could only receive it from a being whose existence lies outside the circle of humanity and who is superior to it” (*Démonstration*, Préface, p. 443).

De Bonald applies here the proof of God based on regressive causality to the process of language acquisition. Arguably, however, his argument against “materialistic philosophy” is more significant. This holds that naturalistic reductionism that regards human beings as “mere animals even if somewhat better organized than others” can only account for the physical continuity of the human race but not cultural continuity, i.e., the non-material mechanism of passing on

and acquiring one's intellectual inheritance (*Démonstration*, ch. 2, p. 452). An individual free from inherited obligations and unbound by all previous normative choices can begin every sentence formulated in its own private language with a capitalized "Ego," but it will never be able to understand other egoistic members of its species. The aggregation of private soliloquies will never yield a human and linguistic community. This requires instead the only "Ego" authorized by God, the "one who speaks and commands," whose divine authorization is justified by the fact that it is the repository and transmitter of the divine gift of language (*Démonstration*, ch. 15, p. 497).

De Bonald devoted the last decade of his life almost completely to improving and refining his theory of language. The better part of his 1828 work, *Recherches philosophiques sur les premiers objets des connaissances morales*, discusses the origins of language and writing. It analyzes rival conceptions in eighteenth-century philosophy of language extensively, paying particular attention to Condillac's and Rousseau's theories on the origins of language as well as to nineteenth-century evolutionary ideas. It charges all of these accounts with methodological individualism, i.e., with having accepted the fallacious supposition that pre-social human beings, pre-social human nature or a human community not acquainted with the use of language could exist. His counter-theory envision human beings as emerging in fully-developed form endowed with all moral and intellectual (sociable and language-using) abilities from the Creator's hand "who is solely capable of perpetuating the existence of the human race, of preserving society by virtue of the inherited and uninterrupted transmission of language—language which is the natural expression of human thought and the necessary means to society's survival" (*Recherches*, ch. 2, p. 121).

The main point of *Recherches* is that human beings are not creative and are ultimately incapable of inventing anything new or at least anything decisively important. It may be able to invent right and wrong, "but not what is necessary." In other words, the invention of language exceeds the scope of human abilities. Condorcet viewed human beings in possession of their "natural" rights—the creators of political arrangements to their own (rational) likeness—as constituting the model of a liberal society. By contrast, for de Bonald the vision of man receiving language ready-made with its pre-individual and superindividual rules correlates with a vision of soci-

ety bound by tradition and governed by an authority that defines the norms and duties of this society from the outside and from above. "Human beings need not invent what has already been invented for them and what they can find everywhere when entering into society as a familiar and commonly practiced system of rules." And just as nowhere "in the world do we find plans to invent new rules of language" so plans to re-organize political arrangements are equally unfeasible. "Language is the expression of the community's ideals" leaving little room for individual invention. Inventors would not even be understood, if they distanced themselves too far from the practices of his predecessors (*Recherches*, pp. 124-25). Moreover, they could not even conceive of such absolute innovations. They would simply lack the words/concepts that are not to be found already in the language they acquired (*Recherches*, p. 127). "Therefore, the impossibility of inventing language can be proved *a priori*, as they say at school. One only has to think of the fact that one would have needed language to think the very thought of inventing language" (*Recherches*, p. 128).

But de Bonald prefers to aprioristic (or rather tautologous) arguments those which rest on "evidence based on historical facts and observations," in other words, the analysis of the mythological tradition which is unified despite all variances in detail. This is because "even the most absurd popular beliefs are often only distorted truths. It is not difficult to detect in these peculiar figments of popular imagination dim memories of ancient traditions of the human race. These are traditions which can be found in every mythology, in those of the Nordic people as well as in Oriental sagas." These are legends about origins which recite the divine or at least superhuman genealogy of man and human arts (including the faculty of speech) (*Recherches*, pp. 129-30).

But we can even set aside the image of the Creator teaching the first man to speak, as a father teaches his son, an image fixed by empirical and historical tradition, and return to the logic of *ex definitione* truths also much cherished by de Bonald. We will then see that the main argument supporting the idea of the faculty of speech being a divine gift is not the Creator's omnipotence but rather his goodness: "How could one imagine that the Almighty, whose essence is being good, would have cast man into the world without recognizing that he needs to rely on those forms of knowledge from the very first

moment of human existence without which he could exist neither individually nor in society, neither physically nor morally. I am talking about those forms of knowledge which are naturally passed on from father to son, one generation to the next, which develop as society develops and change as society changes" (*Recherches*, p. 132).

In de Bonald's view, the materialistic-atheistic conception of humans as pre-social beings can assume the existence of humans without the faculty of articulated speech, or more precisely, the existence of a being who in his pre-human physical form may be reminiscent of humans, but then "they would have to explain how humans, or more precisely, this being without name and shape, which emerged in a raw form from the laboratory of nature, could ascend to the sublime discovery of articulated language on the first day of its existence when it was still neither an animal nor a human? How would this be possible given the fact that we as developed and civilized humans are still unable to think without language and can only speak by means of a language acquired in our childhood which language we may have learnt and repeated but could not discover?" (*Recherches*, pp. 133–34). The naturalistic conception of human nature is indeed natural: purely physical and individual existence does not, according to de Bonald, presuppose communication "speech is only required for social life and moral relationships" (p. 135). That is to say, humans as material beings could not only not discover language because of the absurdity involved in the notion of "speaking matter" but also because they simply did not need speech.

The point of departure for Condorcet's account of the infinite self-perfectioning of the human spirit is a wild and barbaric state. He is unable to explain, however, what made the first human beings embark upon this process of self-perfectioning. He assumes the whole process to be driven by necessity and yet tries to explain how this process began at the first place by recourse to an accident. This is more humiliating for human beings who regard themselves as free and conscious than the idea of divine providence: "He would like human beings to overcome this state [i.e., the state of barbarism—M. L.] by relying on their intellectual powers alone, to see them pass into light from darkness, from death to life, or to say it even more exactly, to attain their existence from nothing, by virtue of endowing themselves with the faculty of thinking through the use of articulated

language. A fortunate accident could suggest to humans a new method in arts provided they are already in possession of all their intellectual abilities," but it could not suggest that "art" itself, the use of language which itself is a precondition of the development of intellectual abilities (p. 138). "Philosophers! Try to reflect and judge without being in possession of a single word, a single expression! What would then take place in your intellects, develop in your minds? Nothing, absolutely nothing, you could not even comprehend your own thoughts..." (p. 139).

Ontogenetically, therefore, language-acquisition precedes (critical) thinking. Innumerable repetitions of words and rules inculcate the laws of language into our minds. Once we have learned to think with their help, we can even criticize them, even though this does not make too much sense since this could only remove us from the community (family or nation)—the language of which we have acquired. "For us, language is like life itself. We enjoy it without knowing what it is that we have accepted, without reflecting upon it beforehand" (p. 141).

De Bonald's interpretation of "in the beginning there was the word" is that "there was nothing prior to language, absolutely nothing" (p. 147). Human life is possible without all other inventions that make human life more beautiful or comfortable. But it is impossible without its very precondition: "which is necessary, most strictly necessary for the emergence and survival of society, which began with society, just as whatever is necessary for human life has emerged simultaneously with humans themselves. Motion is no less necessary for human life than speech for the creation of society" (p. 148).

The chapter of the *Recherches* on the origin of languages is for the most part devoted to Condillac's theory of language, or more specifically, to the critique of sensualist reductionism. De Bonald makes an important distinction between *individuum* and *persona*, in other words, between *individual* and *person*. This is a distinction that also plays a decisive role for Catholic thinkers of the twentieth century. The individual is a natural being, while the essence of personhood is constituted by sociability and the concomitant necessity of communication. An invariable drive connects individual animals of a given species "while in case of the human race, which is not only destined to live in family, but also to participate in social existence, *persons* constituting a society have always had to understand one another as

they have always lived in society" (p. 149). The reduction of these social bonds to pure biological instinct is "the most fatal error of our age." It is incomprehensible how human beings regarded as mere organic material can be the "inventors of society, laws, arts and most importantly of speech" (p. 150). Human nature can only be understood on the basis of social laws, professions and the world of communication. "Art is man's nature" said Burke and de Bonald takes up this idea as well: "although speech is natural for human beings, one still talk of the art of speech as we can talk of the art of life, even though life is *natural*. Language has its own rules and so does the preservation of life" (p. 152).

Condillac and the associationalist-sensualist school draw the conclusion from the conventional nature of a handful of linguistic rules that invention of language as such is also the product of contingent natural events and deliberate conventions. It may be, on this assumption, a social product but it is not a precondition of social coexistence. This argument holds true, however, only of society conceived as the aggregation of individuals. But in de Bonald's view, society is a pre-established (and hierarchically structured) organism constituted by persons that incorporates the word, the aim and means of divine order. "Since society is by no means able to create language, language had to be present as the expression of society at the very emergence of society, received ready-made as society itself. Thus *persons* are always interrelated and always constitute a linguistic community which community defines their essence and shape" (p. 157). Not only can there be no talk of language development within society, but we cannot even talk of language development in a narrower sense: all languages are of equal value, equally well-suited to expressing the needs of society (p. 158).

The principal proof of this is that the truths of the Christian religion can be expressed in all languages, "which explains why, at least from a human perspective, barbaric peoples could be so easily converted to Christianity" (p. 164). Common sense universally present in all people is receptive to these articles of faith. Only science practiced by men of letters which perhaps is intellectually sophisticated when it comes to remote things but useless in everyday life can doubt these truths. By doing so it sometimes flies in the face of the inherent rules of language: "They were less familiar than today with the kind of intellectual attitude that spends its time scrutinizing un-

usual, remote, often superficial and sometimes fallacious points and insignificant details. But they may well had more common sense which is devoted only to genuinely important things and which common sense serves well in place of genius in human affairs" (p. 165).

The most absurd case in which the innovating spirit can be seen to oppose tradition is the corruption of language through the incessant production of *neologisms* (p. 166). The ambition to produce new words and even more the aspiration to alter the spirit of language is a "scandal" in the eyes of common sense. Dictionaries themselves represent a conservative approach with *ne varietur* as their maxim (ibid). "Nowadays we speak differently of the language of ancient chronicles, but ultimately we do understand this language which has met our needs and has served the basic functions of society" (p. 167). The advocates of language development are to be confronted with the general opinion that modern language is corrupted, rather than more perfect. In any case, to hypothesize a language more perfect than that of the Bible is tantamount to blasphemy. And this leads us back to the principle of the divine origins of language: "Thus language is a gift to humans and is not their invention since language is always and everywhere transmitted but is never and nowhere invented by anyone" (p. 171).

Without assuming the divine origins of language one could not account for the fact that despite the differences among particular idioms "language is the same everywhere." In other words, various national languages can be translated into one another without special difficulties. Likewise, the uniformity of human nature remains indubitable despite cultural differences and variations in custom and roles. "Language is necessary because society cannot exist without language just as no man can exist without society. Humans could not invent language. If for no other reason then because they may be capable of inventing what is useful and pleasant, bad and unpleasant, but could never invent what is *necessary*, i.e., what makes them into what they are, what exists prior to them and without them" (p. 173). German philosophers of language, Herder and Humboldt, relied on historical facts to demonstrate the "striking similarity" of various languages proving the fact of a single origin (p. 175).

At the same time, de Bonald goes beyond the argument that the triad of humans/society/language-use mutually define each other. He

claims furthermore that the *ex definitione* valid symbiosis of these elements is reinforced by substantial limitations as well. In other words, God has not only implanted the use of language (or that of a language) into humans but by passing on this language he also transmitted the content of religious, moral and social laws. "The ideas of human beings, emanations of the superior intellect, which serve together with language to define humans, can only be ideas of order, truth and reason containing all the knowledge which is necessary for humans living in society" (p. 182). Analyzing the deep structure of language the human mind can discover the most important moral principles and even articles of faith "possibly even without the assistance of religion" (p. 183). Although de Bonald does not believe in natural religion, he argues that the natural language of divine revelation can mediate every substantive command "turning into law what used to be custom" (p. 184). This fulfills the philosophers' dream of a universal morality, a dream that could never be realized by Enlightenment given its denial of the unified (and transcendent) origins of morality.

Condorcet professes his belief in "every man's brotherhood" and the "common cradle of the human race," but he describes at the same time the progress of civilization as the work of geniuses and that of genial inventions. But what the latter promote is discontinuity (and the excessive separation of various cultures) rather than anything else: "Philosophers of the Enlightenment attributed everything to the work of human genius and wanted to change everything in society. They flattered themselves by advancing the view that human genius has created everything in the Universe" (p. 187). They regarded human history from the invention of language to the declaration of human rights as the product of deliberate activities and treated the transition from the language of duties to the revolutionary idiom of rights as a matter of free choice.

De Bonald's formula repeated over and over again about the superhuman origins of language and the concomitant and inherent system of rules becomes important as it is used to oppose the putative hybris of the self-legislating autonomous human being: "Only religion wields legislative power in society. All laws which are usually called positive are only the applications and corollaries of the fundamental laws of the first-order. Only religion can tame the morals of humans instilling the ideals of order and discipline as well as that

of mutual fraternity into them ..." (p. 189). The essence of divine discourse addressed to humans is the primacy of duty. This is not only the fundamental principle of every religion but also that of every society.

Condorcet embraced the principles of critical reason and moral autonomy to oppose the laws of divine providence as embodied by historical traditions, while Condillac used the empirical image of man reduced to sensory impressions to replace the concept of man created to God's likeness. For him, language is the invention of two children who have survived the Flood. De Bonald takes pains to demonstrate that two children who were cast out of the continuity of civilization before having acquired language are neither capable of physical survival nor of maintaining the spiritual continuity, i.e., language usage, of mankind.

Needless to say, the "blue lagoon" model is just as much a philosophical fiction in Condillac as is the famous statue metaphor of his epistemology. It serves merely to illustrate how the whole complex of human knowledge (and communication) can rest on individual sensory-impressions (and on the conventional strings of sounds expressing these sensory impressions). But for de Bonald this is tantamount to a *reductio ad absurdum* of empiricist epistemology. As a statue will never be able to connect isolated sensory impressions to one another, children outside an ordinary human context (even assuming that they would be capable of physical survival) could not develop linguistic communication. Moreover, de Bonald refers to actual cases of children found in forests to state that not even the physical (physiological) conditions of articulated speech can emerge outside a social context. "Incidentally, Condillac remains faithful to himself in setting up these two hypotheses: he envisions two children in order to understand society, and a statue to explain human nature" (p. 197).

What is worse, this undermines the anti-apriorism of empiricism as well. Language use has to be an innate disposition in one way or another if two isolated individuals are also to be capable of developing it. "No doubt, language is not an inborn disposition of individuals. Nor could we say that it is an innate trait of the species since every people has some kind of a language..." (p. 200). Therefore, the intellect of an individual can be regarded as a *tabula rasa*. What the instructor or the environment etches on this slate is subject to

chance. But the *a priori* of mankind as such (i.e., the intellectual legacy of divine laws and historical traditions) cannot be erased once and for all. This would lead not only to the disappearance of the despised past, but also to that of universal human culture. “Condillac’s error, common in general to all authors belonging to the same philosophical school, is to have assumed in the face of all reason and authority that humans once lived in a primitive animal state without society, at such a level of barbarism that they were even deprived of the ability of communication and the expression of their thoughts and to have attributed to these humans at the same time the characteristics of thinking, intention, need, creative spirit and diligence which are owned only by civilized human beings living in society. In other words, they have associated qualities with the physical and individual nature of humans which can only develop in societal existence by means of society and for the purposes of society” (p. 222).

Finally, de Bonald discusses Rousseau’s theory on the origin of languages. He quotes approvingly Rousseau’s idea that “language was necessary for the invention of language” as well as Rousseau’s criticisms of the Hobbesian and Lockean accounts of the state of nature, namely that these authors impermissibly projected human nature of bourgeois (civilized?) society onto the image of men of nature. Rousseau may have been right in saying that human beings in a natural state did not need language as they were pre-social beings. But then it also follows on de Bonald’s account that these natural beings were not human. The result of abstracting from all social characteristics, in particular from the ability (and need) of linguistic communication, is not pre-social human nature, but a pre-human and non-natural being. “Humans regarded in this way would be beings outside nature. This is because they are assumed to be without society and unfamiliar with all emotions conducive to the formation of society. But society is man’s genuine and in fact sole nature. Human beings are nothing, they do not even exist outside of society” (p. 236).

Joseph de Maistre, the other distinguished Restoration critic of the theory of human rights, chose a more dangerous strategy when setting out to methodologically annihilate human rights declarations: Contrary to de Bonald, he did not reject methodological individualism but discarded rather the universalism of general human characteristics. “The 1795 constitution just as all others before it were

elaborated for human beings as such. But a human being as such does not exist in this world. I have seen in my life Frenchmen and Germans, Italians and Russians—owing to Montesquieu I know that *one can even be Persian*—but as far as *the human being* as such is concerned, I swear that I have never met one in my life. The declaration of human rights would have to be applicable to all human societies from China to Switzerland. But a constitution created for all nations cannot be used in any one of them”(*Considérations sur la France*, ch. 6).

Isiah Berlin may have gone too far in associating de Maistre’s cult of violence with the “origins of fascism,” but it is undoubtedly true that the author of *Considérations sur la France* relies primarily on national particularism to deny the universalism of human rights. De Bonald, no matter how narrow-minded his authoritarian traditionalism may be, preserves the Stoic and Christian principle of the unity of the human race. His statement of the primacy of duties over rights and his imperative calling for an uncritical acceptance of traditional structures analogously with the unreflecting acquisition of linguistic rules are both to be read as applicable “always, everywhere and to everyone.”

There is a lot of talk nowadays about the lack of European conservatism as a counterpart to a European liberal and human-rights oriented conception in post-Communist countries. Even if de Bonald’s ultramontane Catholicism is far removed from modern conservatism, at least it is not linked to Joseph de Maistre’s and Charles Maurras’s “Catholic but not Christian” ultra-nationalist activism. It is associated rather with the universalistic tradition that seeks to identify a common standard of morality for all human beings. And there is indeed a lot worthy of discussion with regard to the nature of this standard: we all share the language, only our expressions differ.

Translated by *András Szigeti*

Notes

- 1 “Observations sur un ouvrage posthume de Condorcet intitulé ‘Esquisse,’” *Conservateur*, January 19, 1809.
- 2 “Sur les Préjugés,” *Mercure*, November 7, 1810.
- 3 “De l’éducation et de l’instruction,” *Conservateur*, November, 1819.

- 4 “De l’éducation publique,” *Conservateur*, October, 1819.
- 5 “Réflexions philosophiques sur la tolérance des opinions,” *Mercure*, June, 1806.
- 6 “Réflexions philosophiques.”
- 7 “Des écrits de Voltaire,” *Défenseur*, December, 1819.
- 8 “De la langue de la politique,” *Conservateur*, December, 1819.

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- Bonald, Louis-Ambroise de (1854–64) *Oeuvres complètes*, ed. Migne, Paris.
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Invasions of the Market

STEVEN LUKES

Social life and politics are everywhere—west, east and south—increasingly market-driven. This is in part the result of the impersonal pressures of the global economy, in part also the outcome of political decision-making and neo-liberal ideology, encouraged and assisted by the World Trade Organization, whose mission it is to bring about just this outcome. Non-market areas of social life are transformed into markets, and this involves commodification and profit-making. This marketization involves a series of transformations. Goods or services are reconfigured so that they can be priced and sold. People are induced to want to buy them. The motivation of the workforce producing or providing them is redirected from collective aims and a service ethic to profit-seeking and market discipline. And typically, when capital moves into a previously non-market sphere, risk is underwritten by the state.

These developments have been met with resistance, but it is not always clear what the grounds for that resistance are or what they should be. In this paper I propose to explore the bases for such resistance by asking the question implicit in my title. When and why is the market out of place? What harm, or rather harms, does market exchange do and to which goods and services and spheres of life is it therefore inappropriate? Why do people think this is so and when and why are they justified in so thinking?

Criticism of the market comes from all points along the left-right spectrum and from beyond it. Thus neo-marxists since Lukács speak of commodity fetishism and reification and those influenced by the Frankfurt school of the colonization of the life-world. Social policy-oriented social democrats like Richard Titmuss and co-operative socialists like Marcel Mauss speak of the market driving out altruism.

Communitarians speak of the “morality of the bazaar”¹ and republicans of the erosion of public institutions and the corrosion of public virtues. Feminists see the market in gestational surrogacy as degrading to women and argue with intensity about whether prostitution oppresses and entraps women or expresses their economic freedom. Tradition-minded right-wingers resent the way in which markets disrupt hierarchies; racist and anti-immigration movements oppose open labor markets. And, beyond the left-right continuum, supporters of green politics defend the objective value of protecting the environment against the anthropocentric view of well-being as consisting in merely human preference-satisfaction.²

To address the question before us properly, some ground clearing is necessary. First, the question of when and why market exchange is invasive is independent of the question of what practically follows, of what is to be done. That depends entirely on the available and feasible institutional alternatives. There may be none. Maybe the only alternative to a given undesirable market is an even more undesirable black market. And if there are alternatives, these may range from various degrees and kinds of regulation to prohibition. I want to focus only on the question in what respects markets can be harmful, leaving open the question of what can be done about them.

Why invasions of “the” market? There are, of course, different kinds of markets in different goods and services with different features that are beneficial and harmful in different ways. I write of “the” market in order to focus on the ways in which the market form of allocation functions in these different contexts. What damaging effects can be attributed to this form, as distinct from the harm or illegality attached to the goods or services so allocated. Addictive drug markets or markets in weapons or in diamonds that finance civil wars or in looted art may be bad but not, or not only, because they are markets. Conversely, good and even sacred things, like bibles, can be marketed without causing trouble. The question is: what harms result from marketing and from rendering marketable, or marketizing, certain goods and services in specific contexts? Moreover, the context in which this occurs can make a difference, increasing or accentuating the harm in question. For example, it has been suggested that under the conditions of contemporary hi-tech, flexible capitalism, “job apprehension has intruded everywhere, diluting self-worth, splintering families, fragmenting communities, altering the chemistry of workplaces.”³

By “the market” I mean institutions involving regular and frequent exchange, buying and selling, that is, trading with enforceable and enforced contracts that is, unlike gift-giving, conditional upon future payment. I leave open whether the payment must be in money (it generally is and I will have nothing to say about barter) and I will try to discuss markets independently of whether they are capitalist, that is, oriented to the production of goods and services for private profit (which will be difficult to the extent that one thinks of market socialism as unfeasible or inherently unstable). Markets can certainly function without private ownership, or even private provision, as when, within capitalist societies, public authorities seek to allocate collectively owned resources by market pricing (though whether these should be seen as real markets is a further question: in practice they are perhaps better described as oligopolistic providers making deals with monopsonist customers).⁴

Clearly, the question of what can make markets invasive is a loaded question, asked against the background of well-known and widely accepted benefits that market exchange brings: dynamism, capacity for innovation, communication of information unavailable by any other means, enhancement of choice and success in promoting long-term economic growth. These features are all vindicated by the world-historical triumph of market over command economies and by the failure of the latter’s attempts to simulate the market. There are three basic respects in which market exchange, where it functions well, can rightly claim superiority over all hitherto known alternative mechanisms: *efficiency in generating Pareto-optimal outcomes*, leading to an equilibrium in which no-one can be better off without someone else becoming worse off; *liberty*, exhibiting voluntary exchange, revealing individuals’ preferences, expressing their consent and co-operation in the face of diverging values; and *equality*, enabling relations between strangers, and dissolving hierarchies, with a formal right of exit, thereby alleviating extreme inequalities.⁵ So what is the case against the market? When and what do markets invade?

Consider first the economists’ view of the matter. By economists I mean classical, neo-classical and especially welfare economists. Their approach offers not an answer to the question under consideration, but rather a change of topic. For the issue for economists is sub-optimality, not harmfulness. Their concern is with the failure of

markets, not with their inappropriateness when successful. The question they address is what are the reasons why markets fail. One central reason is summed up in the concept of externalities—costs imposed on uninvolved third parties. But what counts as an “externality”? Deciding this relies upon a moral theory which economists never make explicit. (What harms amount to a cost? Does harm to others include offense to others? Why not?). Moreover, when economists apply their theory to real world markets, it begins to appear that the typical causes of market failure—asymmetric information, natural monopolies and monopoly power in general, non-zero transaction costs, economies of scale, outright coercion and social norms incompatible with efficiency—are not merely widespread but prevalent. As Elizabeth Anderson has well said, the theory of market failure is “a theory not of what is wrong with markets, but of what goes wrong when markets are not available: it is a theory of what goes wrong when goods are not commodified.”⁶

Within the leadership of New Labour in Britain today, the question of where markets are appropriate is highly controversial. In February 2003, Gordon Brown, the Chancellor of the Exchequer gave a speech to the Social Market Foundation in which he stressed the need for “courage to recognize where markets do not work” and so advanced what is essentially the economists’ case against marketizing health care: against “viewing health care as akin to a commodity to be bought and sold like any other through the price mechanism.” As things stand, he argued, “the standard conditions for a market to function are, to varying degrees, lacking.” The “insurers often have poor information on which to base their risk assessment of the customer” leading to “serious inefficiencies in private pricing and purchasing.” Hence the need for public funding. But there should also, Brown argued, be public provision, because various features essential to a properly functioning market are absent. First, there is “chronically imperfect and asymmetric information” on the part of consumers who are, therefore, not sovereign, combined with “the potentially catastrophic and irreversible outcome of healthcare decisions based on that information.” Second, “local emergency hospitals are—in large part—clusters of essential medical and surgical specialties and have characteristics that make them akin to natural local monopolies.” Third, there are economies of scale and scope that make it difficult to find market solutions. And fourth, it is, as the U.S. health

care system demonstrates, “difficult for private sector contracts to anticipate and specify the range of essential characteristics we demand of a health care system.” If you combine these classic bases for market failure with a policy putting profit maximization by hospitals at the center of health care, you will get a two-tier health care system based on the ability to pay rather than on clinical need. Furthermore, Brown argued, trying to overcome all this by market regulation, even were it feasible, is doomed, since “public provision is likely to achieve more at less cost to efficiency and without putting at risk the gains from the ethic of public service where, at its best, dedicated public servants put duty, obligation and service before profit and personal reward.” In short, in health, “price signals don’t always work, the consumer is not sovereign, there is potential abuse of monopoly power, it is hard to write and enforce contracts, it is difficult to let a hospital go bust [and]...we risk supplier induced demand.”⁷

But the problem is that the spreading marketization of the world that we are living through precisely consists in overcoming such problems where possible, turning non- or failing markets into markets, in reconfiguring goods and services that are not commodities into commodities, so that they can be priced and sold, and in inducing or encouraging people to want to buy them, while redefining the workforce of service providers as producers of commodities, converting “services” into “industries,” and “duty, obligation and service” into “profit and personal reward.” In his recent excellent book, *Market-driven Politics*, Colin Leys has described the massive transformation of services, weaning “consumers from services into consuming material goods and providing the labor component themselves” and traced in particular the story of the developing commodification of health care in the British National Health Service (he does the same for public television), summarizing his findings as follows: “The hospital service is stripped of its role as a provider of care and ‘reconfigured’ as an increasingly industrialized provider of treatments; more and more NHS functions are privatized and commodified; the boundaries between it and commercial medicine are blurred and increasingly breached. While clinical services remain formally free and universal, they are no longer all publicly provided, and further installments of ‘marketization’ are confidently expected by the commercial health-care industry.”⁸

So we need to pose anew the question before us: namely, where are markets out of place, and why? We need to consider not why markets fail, but where, to the extent that they succeed, they are harmful and why, and why, in such cases, they should, where this is feasible without creating greater harm, be regulated or prevented.

There are, I suggest, three broad distinct answers to this question. All have force, though they are not equally compelling; nor are they necessarily mutually coherent.

Commodification

One widely favored answer focuses on a notion to which I have already alluded: commodification. This term expresses an internally complex idea which can be seen as part of the long history of critical reflection upon the effects of market institutions: of money, which Shakespeare's *Timon of Athens* called "Thou common whore of mankind,"⁹ of trade and of what the French came to call *commerce*. One principal source of both the term and the idea is Marxist. Marx, indeed, quoted *Timon's* epithet in his early Paris manuscript on money, which he, in turn, called "the bond of all bonds" and "the universal agent of separation."¹⁰ Marx and Engels famously wrote in the *Communist Manifesto* that, as the "constantly expanding market" spreads over the surface of the globe, all that survives is "callous 'cash payment': men are drowned in the 'icy waters of egotistical calculation,'" "all fixed, fast-frozen relations, with their train of ancient and venerable prejudices and opinions are swept away, all new-formed ones become antiquated before they can ossify" and "all that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses, his real conditions of life, and his relations with his kind."¹¹ And Marx devoted a section of *Das Kapital*¹² to analyzing what he called "commodity fetishism," which in turn influenced Georg Lukács to develop the idea of reification. "Commodification" has come to be widely used by non-marxists but its meaning continues to recall its origins.

Margaret Radin has given us a useful breakdown of what she calls its component "indicia."¹³ Goods or services are commodified when they exhibit the following features:

- 1 objectification—treating persons and things instrumentally, as manipulable at will
- 2 fungibility—when they are fully interchangeable with no effect on their value to the holder
- 3 commensurability—when their values can be arrayed as a function of one continuous variable or can be linearly ranked
- 4 money equivalence—where the continuous variable in terms of which they can be ranked is monetary value.

If these are the features which render goods or services commodified, the question then arises: what harm is held to flow from these features? The answer to this is, I suggest, twofold. On the one hand, certain goods and services are said to be debased or distorted by being commodified, that is, treated as marketable. Call this the *corruption argument*. By “corruption” I mean to adduce the general idea of *pathology*: the thought that the impact of the market is to distort, impair or degrade otherwise well-functioning and potentially flourishing activities or relationships. The standpoint from which this thought arises is sometimes Kantian, sometimes Aristotelian, sometimes both. People should be treated as ends, not means; as subjects, not objects; as having dignity, not price; and they can only flourish as fully human in certain favoring contexts, or through realizing goods internal to social practices¹⁴ to which market motivations are a threat.

The general idea is this: that among the goods that people value there are some which have the value they do in part just because they are not up for sale and, if they do start to be bought and sold, or are even seen as saleable, their value is debased. And to this idea a second, expressed in the quotation above from the *Communist Manifesto*, is often adjoined: that, once this process begins in respect of one such good, other such goods are infected and the contamination spreads, across persons and across goods. Changing for a moment the metaphor, this has been called the “domino effect” by Margaret Radin. According to this argument (to change the metaphor yet again), there is “a slippery slope leading from any sales of something to a market regime for some things, and there is a further slippery slope from a market regime from some things to a market regime encompassing everything that people value.”¹⁵

The idea here is that certain exchanges should, if possible, be

blocked to prevent the corruption that markets allegedly cause from spreading. Call this the *contagion argument*.

How, then, are we to recognize where corruption and contagion occur? When do the processes which commodification describes do their distinctive damage? Which goods and services are at risk? Michael Walzer in his *Spheres of Justice*, advances a relativist or conventionalist version of the corruption argument. Walzer argues that the various items he lists as defining his spheres—notably security and welfare, office, kinship and love, political power, and so on—are to be protected from what he calls the tyranny of “market imperialism”—the dominance of the sphere of money and commodities—because our “shared understandings” require this. (“The market is a zone of the city, not the whole of the city.”)¹⁶ But the problem is that we do not have a single, shared map: our understandings of where these boundaries should lie are, precisely, neither sharply drawn nor shared. On the contrary: they are confused, inconsistent, and contested. Moreover, they reflect unequal power relations, in which some voices prevail and others are silent. Walzer’s idea of social justice requires that commodities are exchanged through bargains, not commands or ultimatums and no exchange is “desperate,” while “the welfare state underwrites the sphere of money when it guarantees that men and women will never be forced to bargain without resources for the very means of life.”¹⁷ To suppose such an understanding to be shared is wishful thinking indeed. So we need an objectivist, non-relativist argument in order to recognize and avoid corruption and contagion.

One such is provided by Elizabeth Anderson. According to her, market norms come into conflict with social norms that govern the social settings individuals require in order to develop and express their freedom and autonomy by valuing different kinds of goods across a significant range of options. Her central idea is that markets are suitable only for the allocation of “pure economic goods”—goods that are merely means to other individual ends and are “traded with equanimity for any other commodity at some price.” They are appropriate to the allocation of goods which are subject to “a lower, impersonal and exclusive mode of valuation” and are thus unsuitable for allocating goods that are “higher, personal, or shared”—goods that are valued intrinsically, as unique and irreplaceable or valued for their attachment to oneself and goods whose value depends on shar-

ing the same item according to shared understandings of what it means. Market norms, she argues, are impersonal and instrumental (each party to a transaction treating the other as merely a means to the satisfaction of ends defined independently of the relationship and of the other party's ends), egoistic, exclusive, want-regarding and oriented to exit rather than voice.¹⁸

So corruption happens when market norms are applied improperly. Goods or services are corrupted, or distorted, when they are mistakenly treated as purely economic. So, for instance, gift-giving becomes corrupted if it becomes minutely calibrated to ensure that the prices of gifts received and given are equalized (though, if giving were to be made conditional upon receiving equal value, one may ask whether this is a gift). Gift-giving involves reciprocity but excludes commensuration to secure equivalence: mutual relationships resist the balancing of accounts. Marcel Mauss in *The Gift* wrote of "obligation and spontaneity in the gift" and of "our good fortune that all is not yet couched in terms of purchase and sale": we might, he optimistically thought, "once again discover those motives of action still remembered by many societies and classes: the joy of giving in public, the delight in generous artistic expenditure, the pleasure of hospitality in the public or private feast." He even imagined a Welfare State in which contributions were not equated with receipts, a future in which "[s]ocial insurance, solicitude in mutuality or co-operation, in the professional group and...Friendly Societies" exhibit the principles of "honour, disinterestedness and corporate solidarity," so much better than "the mean life afforded by the daily wage handed out by managements, and better even than the uncertainty of capitalist savings." We must become, he thought, "in proportion as we would develop our wealth, something more than better financiers, accountants and administrators. The mere pursuit of individual ends is harmful to the ends and peace of the whole, to the rhythm of its work and pleasures, and hence in the end to the individual."¹⁹

For Richard Titmuss the giving of blood exhibits the altruism which, he claimed, selling it extinguishes. For the "paid seller of blood is confronted...with a personal conflict of interests...Because he desires money and is not seeking in this particular act to affirm a sense of belonging he thinks primarily of his own freedom; he separates his freedom from other people's freedoms."²⁰ And there are other "higher, personal and shared" goods that are, on this argu-

ment, unsuitable for selling. So, according to Georg Simmel, in prostitution “the stake of the woman is infinitely more personal, more essential, encompassing more of her ego than that of the man, and for which, therefore, a money equivalent is most unsuitable and inadequate, the giving and taking of which means the extreme abasement of the female personality.”²¹ Is the same true for the sale of reproductive services? And what about the sale of kidneys and other body parts?

How compelling are these examples? And how far can they be extended? To fencing off and charging for entry to beaches and cliff walks, or to museums and art galleries? To the commercialization of the arts? To the marketing of cultural goods in general?²² To the buying and selling of medical services and of educational services?

In order to answer these questions, we must attend to the structure of both the corruption and the contagion arguments. What they claim is that the mode of allocation of goods and services has a specific causal impact on the mode of their enjoyment: specifically, that the features that comprise commodification of certain goods and services exclude, by a sort of psychological Gresham’s law, the realization of their intrinsic value. It is not clear whether this applies to one, some or all four of the features of commodification, but in any case, the claim is that, where corruption holds, commodification drives out what is intrinsically valuable about a given good or service for given individuals, and where contagion occurs it drives out what is intrinsically valuable for others, and perhaps for other, even most or all, goods and services. So, Titmuss suggests, selling blood crowds out altruism. And if contagion occurs, it diminishes the scope for giving it and perhaps other worthwhile things in society at large. As he famously put it, “private market systems in the United States and other countries ... deprive men of their freedom to choose to give or not to give”: the commercialization of blood has the effect of “discouraging and downgrading the voluntary principle. Both the sense of community and the expression of altruism are being silenced.”²³

Or, to give another example, suppose that sex were to be fully and openly commodified: “Suppose newspapers, radio, TV and billboards advertised sexual services as imaginatively and vividly as they advertise computer services, health clubs or soft drinks. Suppose the sexual partner of your choice could be ordered through a catalog, or through a large brokerage firm that has an 800 number, or at a

trade show, or in a local showroom. Suppose the business of recruiting suppliers of sexual services was carried on in the same way as corporate head hunting or training of word-processing operators." (As the age of the Internet and cable and satellite television proceeds, are we really so far from realizing this state of affairs?) Then, Radin speculates, perhaps "its commodification of sex would be reflected in everyone's discourse about sex, and in particular about women's sexuality. New terms would emerge for particular gradations of sexual market value. New discussions would be heard of particular abilities or qualities in terms of their market value. With this change in discourse, when it becomes pervasive enough, would come a change in everyone's experience, because experience is discourse dependent."²⁴

Is this claim plausible? There is, I think, no general, overall answer: it can only be answered case by case. Thus the marketing of Anderson's "pure economic goods" can, plainly, have a direct, deleterious effect upon both the incidence and distribution of goods that are "higher, or personal, or shared." Here is an example. In April 2003 the chocolate manufacturer Cadbury launched a £9m campaign to persuade children to buy 160m chocolate bars, containing 2m kg of fat, in exchange for "free" sports equipment for their schools, claiming that the initiative would help to tackle obesity. Cadbury Schweppes has, in fact, one of the worst portfolios for products in terms of children's well-being. The British Dietetic Association spokesperson commented that "We are running an Eat to be Fit campaign at the moment warning children of obesity. Our research shows 31% of children are overweight and 17% are obese."²⁵

But there are general grounds for some skepticism. Consider just two of the features of commodification: objectification and commensurability. Must Titmuss's "personal conflict of interests" always be resolved by suppressing one or the other?²⁶ Do people not endlessly contain contradictions and exhibit ambivalence? Are experience and discourse so malleable and is experience so "discourse dependent"? And why should there not be alternative, co-existing distributive mechanisms for blood without one driving out the other? Is it really true that viewing and treating others as means to individual ends, and seeing the world in impersonal and quantifiable terms are incompatible with altruism, reciprocity and the realization of values that are "higher, personal and shared"? Mary Douglas has persua-

sively argued that goods are to be seen as “ritual adjuncts” and their consumption as a “ritual activity,” which “uses goods to make firm and visible a particular set of judgments in the fluid process of classifying persons and events.” In an individualist weak-grid, weak-group modern capitalist society, market behavior will, on this account, be amenable to anthropological interpretation as a mode of “fixing public meanings.”²⁷

Moreover, are there not indeed many contexts, especially in modern urban living, in which instrumental relationships, and seeing the world in anonymous and commensurable terms, is much to be valued, indeed an essential precondition for, and counterpoint to, mutual relationships in more intimate settings? You want your doctor to have a bedside manner, but you also want patients to have hospital numbers and medical resources to be rationally allocated on objective grounds, whatever these may be. Indeed, it is not even obvious that treating people as objects and as a means to some end is always a bad idea. It must depend on the end and on who is doing what in pursuing it. According to his biographer, Beethoven was “filled with a deep conviction as to the significance of his work and his art” and in 1801 referred to two of his friends as “merely...instruments on which to play when I feel inclined...I value them merely for what they do for me.”²⁸

As for commensurability and incommensurability, why should we assume that we cannot both know the price of something and know that it is priceless? On the one hand, we adhere to the notion of the sacredness and absolute value of the individual, which, as Simmel noted, arose out of Christian doctrine and negates “the ideal basis of blood money and slavery”: “Over and above all the details, relativities, particular forces and expressions of his empirical being, stands ‘man’, as something unified and indivisible whose value cannot possibly be measured by any quantitative standard and cannot be compensated for by more or less of another value.”²⁹

On the other hand, we make insurance decisions and pay medical administrators and policy makers to allocate resources and plan the siting of airports on the basis that alternative options involve the statistical certainty of deaths and injuries that we expect to be costed on a rational and systematic basis that puts a (regularly updated and commercially based) value on human lives.³⁰

Commodification may sometimes, even often, constitute a harm

done when marketing and marketizing certain goods and services distorts or debases their nature, and that harm may be amplified through contagion, for instance by market ideology and rhetoric. But some skepticism and questioning is in order. We certainly need a better understanding of the mechanisms that allegedly generate corruption and contagion.³¹ Furthermore, in asking what harms markets can do, we need to look beyond the direct effects of markets upon goods and services seen in abstraction from social and political relationships. We need to ask to what extent and in what ways these can in turn be adversely affected by certain markets. And we need to know where to center our concerns: upon markets and their effects, or upon the social and political relationships they mirror and reinforce.

Inequality

A second answer to our question when markets are invasive is that they reflect and exacerbate inequalities of various kinds. Obviously, market allocation is, in a trivial sense, inherently inequalitarian, delivering, as supply responds to demand, unequal outcomes in the form of unequal goods, income, wealth and, indeed, status and power. It is also, equally trivially, at least in its textbook version, inherently egalitarian, presupposing equal consumer sovereignty, and equal access to entry, information and opportunity to compete, and equal rights to exit. On the other hand, real world markets are not “spontaneous orders,” but norm-governed institutional orders. As Amartya Sen has put it, “market forces can be seen as operating *through* a system of legal relations (ownership rights, contractual obligations, legal exchanges, etc.).”³² Real world markets exhibit asymmetrical information and unequal power, which derive from the massive and organized power of corporations vis-à-vis ‘natural persons’ or individuals, from the unequal endowments and exchange entitlements actors bring to the market and from the operations of the market itself. To seek to rectify the latter, market regulation can be introduced.

Markets respond, and are supposed to respond, to preferences expressed in effective demand, not to concerns about the urgency of need. So it is not surprising that they have unjustifiably or harmful

inegalitarian consequences when, as a result of their functioning, individuals or whole categories of individuals fall below a baseline level of deprivation, where “deprivation” signifies poverty and social exclusion and, in general, a failure of basic capabilities, understood as people’s inability to satisfy certain crucially important functionings up to certain minimally adequate levels. Clearly this baseline will be subject to historical and cultural variation, and it will correlate imperfectly and variably with inadequacy of income. But it will obviously include access to a range of basic goods and services such as food, clean water, electricity, shelter, life-saving drugs, and some level of medical care, education, and basic security. Where, under conditions of low economic development, or in the absence or failure of effective social rights (or an adequate and universally accessible insurance market), people are dependent on access to these goods and services through markets, then if such markets function in such a way as to deprive individuals or categories of individuals of the ability to command such goods and services, they are plainly harmful.

Markets also reproduce and enhance pre-existing inequalities, operating differentially to the advantage of those with greater resources and greater power. The former are relatively insulated from the impact of market forces and are able to exercise market power, and the right to exit, even in the absence of monopolies. Satz cites the example of assets sales of livestock and land at “fire sale prices” which regularly happen in drought stricken areas in poor countries. Even where there is no element of monopoly in the operation of these markets, they set in motion processes of dispossession of assets by the poorest and accumulation by the richest.³³ And consider, for example, the amplifying effects of the housing market, when asymmetrical residential housing patterns result from the unhindered play of market forces, thereby reinforcing ethnic and class inequalities. Low-income, unskilled or unemployed workers and those from low-status ethnic groups will, even in the absence of discrimination, restrictive mortgage lending, zoning regulations, public housing policies, etc., be unable to move out into the suburbs or into middle- or upper-class neighborhoods. In this way, the housing market serves to reinforce economic and status inequalities, and those who live in poorer neighborhoods also have to accept poorer schools, lower quality public services and higher crime rates.

Inequality, of resources and power, in fact, offers an illuminating perspective within which to revisit some of the examples of markets that were considered in the previous section, abstractly, as instances of commodification. Are not many of the concerns typically expressed in terms of the corruption and contagion arguments actually worries about inequality and subordination? How many people would sell their kidneys and how many women would sell their reproductive capacity under conditions of greater equality of condition? Under such imagined conditions, what exactly would be the objection? Consider the notorious case of Baby M, in which Mary Beth Whitehead, who gave birth to the child, was judged by the lower court not to be a mother but merely a contractually agreed means to the gratification of the sperm donor—a decision properly reversed on appeal. What went wrong here? Is the lesson of the story one about “what happens when people treat people like things,” or is it that contract motherhood is “an inherently unequal relationship involving the sale of a woman’s body and a child”?³⁴ Isn’t the central troubling worry about the case that, if the first judgment had been left standing, this would have reproduced and reinforced a negative stereotyping of women? For, as Radin suggests, “under current circumstances surrogacy can readily be culturally interpreted as reinforcing gender hierarchy, because it allows an exception to the general prohibition of commissioned adoption, and the exception privileges the male line.”³⁵

Is the case against prostitution parallel? Is the primary objection commodification or is it inequality? Simmel makes both objections. On the one hand, as we have seen, he argues that the woman’s personality is maximally suppressed. On the other hand, he goes on to write: “What is important here is not that prostitution means polyandry, but that it means polygyny, which degrades the personal value of women and causes the woman to lose her scarcity value. Viewed superficially, prostitution combines polyandrous with polygynous features. But the advantage of the person who gives the money over the person who provides the commodity grants a tremendous superiority to the male and determines the character of prostitution as polygynous.”³⁶

Radin suggests that it is scarcely worth asking “whether ‘pure’ commodification, absent any other worrisome features such as maldistribution or wrongful subordination, would trouble us.” This issue, she thinks, is “a professor’s hypothetical,” since commodification

occurs in market societies in which inequality and subordination are inherent: she suspects that "this hypothetical disconnection of commodification from subordination is not a fruitful avenue of inquiry."³⁷ But, professorial or not, asking this question is helpful, indeed essential, if we are to address the question before us, namely, what makes markets invasive—the answer to which (it should be obvious by now) is by no means obvious. For one thing, it is not clear that the same answer applies to all cases. For another, it surely matters a great deal, if different kinds of inequality can be combated and reduced and if the effects of markets can avoided, or limited by regulation, to know where we should direct our attention and political energies.

What are we to make of the cases of Anderson's "higher" and "shared" goods, such as charging for entry to museums and galleries, beaches and cliff walks? Is the problem here distortion or exclusion? The enjoyment of the goods in question remains as intrinsic as ever, albeit restricted; the point is that its availability is effectively rationed on an irrelevant class basis.³⁸ Is the same not true, in part, of the commercialization of health services, because, as Gordon Brown himself argued, the introduction of profit maximization leads to a two-tier health care system based, not on clinical need, but on the ability to pay?

What about the commercialization of cultural goods? Are these, by being commodified, distorted and debased, whether directly or indirectly?³⁹ This question invites an extended and complex debate. Some areas of culture and the arts, such as opera, usually require protection from market forces, through patronage or subsidy, in order to flourish. Others, such as popular music and the cinema, have flourished because of mass availability through the market. Yet others have suffered a serious diminution in quality as the market has taken hold. Colin Leys tells the disturbing story of the effects of the dramatic expansion of commodified television on public service broadcasting in Britain which he treats as a case study in marketization, in which we see "the conversion of services into commodities; the creation of a demand for those commodities; the conversion of the labour force into one willing to produce profits; and the intervention of the state to lower the risk of investment."⁴⁰ To consider why this is so, and what harm is involved, we must turn to the third and final answer to the question of what makes markets invasive.

Citizenship

This is that markets can conflict with the requirements and preconditions of citizenship. One possible approach is to see the question in the light of the corruption argument. It is sometimes said that market relationships, and the associated language of buyer and seller, producer and consumer, industry and enterprise, have corrupted the public domain and what Gordon Brown called “the ethic of public service.” But such an assertion does not advance the argument and begs too many questions. We need to remind ourselves what citizenship consists in and what its relevant requirements and preconditions are.

Citizenship in capitalist liberal democracies can be seen as embodying a central political core which, as T. H. Marshall argued, in Europe and in Britain especially, expanded its scope into a set of social rights to basic services in the course of the twentieth century. The core consisted and consists in civil rights—“liberty of the person, freedom of speech, thought and faith, the right to own property, and to conclude valid contracts, and the right to justice” and political rights—“to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body.”⁴¹ These can be seen as embodying the requirements of citizenship: entitlements that are inseparable from the status of citizen and so non-transferable, and therefore not available for sale and purchase. In practice, some of these rights, notably votes, have been bought and sold, but the rationale for the core of citizenship—representative democracy, in which citizens are presumed to be equals electing legislators who are responsible to them—makes clear why such a practice is illegitimate. Of course the effective exercise of rights of citizenship has always been unequally distributed but the equality of citizenship status has always made clear why their transferability and thus marketability was out of the question.

As Marshall argued, the first half of the twentieth century saw the acquisition by citizens of a range of basic services to which they could claim entitlement as citizens, services funded and provided by the state and thus excluded from the scope of the market. These are sometimes seen as constituents of “social citizenship” but they can, equally, be seen as supplying the preconditions for core citizenship by enabling citizens to acquire and maintain the capacities needed for

its equal exercise. The content of these services varied in different places and times, but it has generally included as a minimum the provision of education to ever higher levels in the course of the century, healthcare, and financial support in case of unemployment, injury, ill health and old age, but also in some fortunate places legal aid, citizens' advice, access to public spaces, public libraries, public broadcasting, and so on. In this way, the reach of the market was resisted by an ethos, whether based on social-democratic or Christian ideals, of welfare, publicly funded and publicly provided. In several European countries these arrangements were stabilized in various welfare regimes after the Second World War.

In the latter third of the twentieth century, the story that Marshall told took a new turn. The age of economic growth fuelled by industrial production peaked by the 1970s and capitalist firms began to abandon manufacturing and increasingly sought to make their profits in the service sectors, including health, education, legal and other professional services. As Colin Crouch has written, this has raised a problem: "Some potentially very profitable services are those of the welfare state, protected from private ownership and the market as part of the mid-century citizenship package. So long as the welfare state survives, potential areas of profit-making are excluded from capital's reach. Post-industrial capitalism has therefore started to try to undo the deals made by its industrial predecessor."⁴²

The activities of the WTO and the world-wide spread of neo-liberal ideology, encompassing governments of the center-left, has further encouraged this trend, opening up health services, education, public utilities, transport and broadcasting to marketization and privatization. Against this background, we can see how and in what ways the market has come to invade the domain of citizenship: how both the requirements of core citizenship and the provision of its social and cultural preconditions have come under threat from the inexorable expansion of the market.

The requirements of citizenship in representative democracies most obviously exclude the use of market power to buy political influence in the electoral process. The private financing of political campaigns and the corporate domination of mass media is thus in direct conflict with these. This has long been a problem in the United States but has now arisen as such in various other capitalist countries, most obviously in Italy. But a further direct conflict with

the requirements of core citizenship is a direct result of the recent expansion of the market into public services described above. For as privatization and contracting out of services has proceeded, the essential link between elector and representative (national or local) is severed. Marketization has enabled politicians to divest themselves of responsibility and, crucially, accountability for the provision of public services. The government contracts with the supplier but citizens can no longer hold their representatives accountable for service delivery, which has been rendered faceless by being consigned to anonymous forces of the market. In this way, as the recent story of rail privatization in Britain shows, contractors engage sub-contractors, and the market in services proliferates, and the provision of once-public services moves out of the citizens' purview and control.⁴³

Finally, I turn to the question of the preconditions of citizenship: the various services that generate and sustain the capacities of people to function as good citizens of representative democracies. There is scant reason to believe that all of these will be provided by market forces alone. In particular, where markets invade the spheres of educational provision and public broadcasting, some of the capacities needed for equal citizenship are likely to be impaired and undermined. I refer here once more to Colin Leys's discussion of the decline of public broadcasting and current threats to public broadcasting in Britain, which quotes Rupert Murdoch's succinct definition of the public interest as "offering the public what interests it" and concludes with the forlorn thought that, as things have been going, "the idea of television as a medium of the public sphere, a forum for the 'main conversation of society' would come to seem as quaint and outdated as the stagecoach."⁴⁴ Consider, for example, the consequences of market-driven media, as opposed to adequately regulated public broadcasting) during national crises, such as wartime.⁴⁵

Leys's conclusion is as follows:

Public services are defining features of a civilized society, which capitalist market production, if it persists at all, should exist to pay for, and to which it should be subordinate. Many of the things that are primary requirements of genuine democracy (as opposed to a cynical conception of democracy as the sale to voters by political elites of "political products," to be marketed like all other commodities) are goods that markets will not provide, such as

general education, objective information, universally accessible media of communication, public libraries, public health and universal health care. Markets provide these things at best unequally, if at all, so they have to be provided collectively instead. They are anything but secondary.⁴⁶

Indeed they are not. The issue of how important they are acquires a new urgency in face of the constant, unrelenting expansion of the market into services once thought of as immune or resistant to it⁴⁷ and into sectors hitherto protected by political guardians of the Welfare State, whose confidence in its principles can no longer be taken for granted. There is a valuable academic tradition of research and reflection on the economic, social and cultural conditions for well-functioning representative democracies, or polyarchies.⁴⁸ Given the way the world is going, the question of where and how the market impedes their provision deserves ever closer attention.

Notes

- 1 Michael Walzer, *Spheres of Justice. A Defence of Pluralism and Equality* (Oxford: Martin Robertson, 1983), p. 109.
- 2 See Russell Keat, *Cultural Goods and the Limits of the Market: Beyond Commercial Modelling* (Basingstoke: Macmillan, 2000), chapter 2.
- 3 *The Downsizing of America* (New York: Times Books, 1996), pp. 7–8 quoted in Richard Sennett, *The Corrosion of Character: The Personal Consequences of Work in the New Capitalism* (New York: W. W. Norton, 1998), p. 97.
- 4 Colin Crouch, *Commercialization and Citizenship: Educational Policy and the Future of Public Services* (London: Fabian Society, 2003).
- 5 See Debra Satz, “Noxious Markets: Why Some Things Should Not Be For Sale,” in Prasanta Pattanaik and Steve Cullenberg (eds.), *Globalization, Culture and the Limits of the Market: New Essays in Economics and Philosophy* (New York: Oxford University Press, forthcoming).
- 6 Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge, Mass.: Harvard University Press, 1993), p. 192.
- 7 “A Modern Agenda for Prosperity and Social Reform” Speech by the Chancellor of the Exchequer, Gordon Brown to the Social Market Foundation at the Cass Business School, London on 3 February 2003, (London: HM Treasury), pp. 15–19.
- 8 Colin Leys, *Market-driven Politics. Neoliberal Democracy and the Public Interest* (London: Verso, 2001), p. 212.

- 9 Act IV, Scene III.
- 10 Karl Marx, *Early Writings*, translated and edited by Tom Bottomore (London: Watts, 1963), pp. 191–92.
- 11 Karl Marx and Frederick Engels, *Manifesto of the Communist Party* (Moscow: Foreign Languages Publishing House, 1957), pp. 51–53.
- 12 Chapter 1, section 4.
- 13 Margaret Radin, *Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts and Other Things* (Cambridge, Mass.: Harvard University Press, 1996), chapter 8, especially p. 118.
- 14 For this Aristotelian interpretation, see Alasdair MacIntyre, *After Virtue. A Study in Moral Theory* (London: Duckworth, 1981), ch. 14.
- 15 *Op. cit.*, p. 99–100.
- 16 *Op. cit.*, pp. 120, 109.
- 17 *Ibid.*, p. 121.
- 18 *Op. cit.*, pp. 143–47 and chapter 7 *passim*.
- 19 Marcel Mauss, *The Gift. Forms and Functions of Exchange in Archaic Societies*, translated by Ian Cunnison (London: Cohen and West, 1954), pp. 63 sqq.
- 20 Richard Titmuss, *The Gift Relationship: From Human Blood to Social Policy* (London: Allen and Unwin, 1970), p. 240.
- 21 Georg Simmel, *The Philosophy of Money*, translated by Tom Bottomore and David Frisby (London: Routledge and Kegan Paul, 1978), p. 379
- 22 See Keat, *op. cit.*
- 23 *Op. cit.*, pp. 239, 157.
- 24 *Op. cit.*, p. 133.
- 25 *The Guardian*, April 29 2003.
- 26 Contrast this with the characteristic approach of Simmel, who wrote of the “disintegrating and isolating effect of money” as the “general precondition and corollary of [its] conciliatory and unifying quality,” so that “under specific historic conditions, money simultaneously exerts both a disintegrating and a unifying effect.” (*Op. cit.*, p. 345).
- 27 Mary Douglas, *The World of Goods*, first published 1979, republished as volume VI of her *Collected Works* (New York and London: Routledge, 2002), pp. 43, 45, 43.
- 28 Maynard Solomon, *Beethoven* (New York: Schirmer Books, 1977), p. 86
- 29 *Op. cit.*, p. 360.
- 30 For further elaboration of this idea, see my essay “On Comparing the Incomparable: Trade-offs and Sacrifices” in Ruth Chang (ed.), *Incommensurability, Incomparability and Practical Reason* (Cambridge, Mass.: Harvard University Press, 1997), reprinted in Steven Lukes, *Liberals and Cannibals: The Implications of Diversity* (London: Verso, 2003).
- 31 I am grateful to Natalie Gold for showing me the first chapter of her forthcoming study of this intriguing question.
- 32 Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon Press, 1981), p. 166.
- 33 *Op. cit.*
- 34 Katha Pollitt, “Contracts and Apple Pie: The Strange Case of Baby M” reprinted

- in *Reasonable Creatures: Essays on Women and Feminism* (New York: Knopf, 1994), pp. 68, 78.
- 35 *Op. cit.*, p. 161.
- 36 *Op. cit.*, p. 379. I have corrected the Bottomore-Frisby translation, which misleadingly uses “polygamy” and “polygamous” where, clearly, “polygyny” and “polygynous” are meant.
- 37 *Op. cit.*, pp. 161–163.
- 38 Indeed, one might argue, insofar as the goods in question are ‘positional goods’, the intrinsic value of their enjoyment is preserved. See Fred Hirsch, *Social Limits to Growth* (London: Routledge and Kegan Paul, 1977).
- 39 See Keat, *op. cit.*
- 40 Leys, *op. cit.*, p. 136.
- 41 T. H. Marshall and Tom Bottomore, *Citizenship and Social Class* (London: Pluto, 1992), p. 8
- 42 Crouch, *op. cit.*, pp. 6–7.
- 43 See M. R. Freedland, “The Marketization of Public Services,” in Colin Crouch, Klaus Eder and Damian Tambini (eds.), *Citizenship, Markets and the State* (Oxford: Oxford University Press, 2001).
- 44 *Op. cit.*, p. 163.
- 45 Contrast the effects of commercial pressures on US media in the treatment of the second Gulf War of 2003 with the independence of the BBC, whose Director General commented on the fragmented character of the US media market: “Many of the large television news organizations in the States are no longer profitable or confident of their future. The effect of this fragmentation is to make government—the White House and the Pentagon—all-powerful, with no news operation strong enough or brave enough to stand up against it.” (*The Guardian*, April 25 2003).
- And compare the condition of radio (as of 2003) in the U.S. and the UK.
- 46 *Ibid.*, p. 220.
- 47 Notably those providing goods in a manner once, wrongly, thought to be unsusceptible to productivity increases because the human touch is what is crucial and because their quality is believed to be inseparable from the amount of labor devoted to their production. Can we still be sure that this is true of doctoring and teaching? (See Ruth Towse [ed.], *Baumol’s Cost Disease. The Arts and Other Victims* (London: Edward Elgar, 1997) and the discussion in Leys, *op. cit.*, pp. 90–95).
- 48 See, in particular, the later writings of Robert Dahl, notably his *Polyarchy: Participation and Opposition* (New Haven: Yale University Press, 1971).

The Hope to Be Free: Freedom as Fact, Postulate and Regulative Idea in Kant

GYORGY MARKUS

“...[W]hat is quite remarkable, there is even one idea of reason (which is in itself incapable of any presentation in intuition, thus incapable of theoretical proof of its possibility) among the facts (*Tatsachen*), and this is the idea of *freedom*, the reality of which, as a particular kind of causality (the concept of which would be excessive from a theoretical point of view) can be established (*dartun lässt*) through practical laws of pure reason, and, in accordance with these, in real actions, and thus in experience.—It is the only one among all the ideas of pure reason, whose object is a fact and which must be counted among the *scibilia*” (*CPJ* 5:468/332–333).¹

Those familiar with the *Critique of Practical Reason* may find this statement of Kant, from the concluding section of the *Critique of the Power of Judgment*, surprising, perhaps even upsetting. Kant here clearly asserts that our freedom (and not only our consciousness of it) is for us a fact (*Tatsache*), and, since freedom is the idea of pure reason that never can be given in intuition, it must be a *fact of reason* (*Faktum der Vernunft*, in the terminology of the Second Critique). Nevertheless, as a fact, it is something that we can know (*scibile*), and, as the broader text makes it clear, know in a similar sense we can know the properties of mathematical magnitudes or the properties of physical objects. And we can know it, because we can have an experience of it, even if this latter is not an intuitive, but *sui generis* kind of experience.

All this seems to be, however, hard to reconcile with the standpoint of the Second Critique, at least as it is usually understood. Most contemporary interpreters of Kant² regard either the consciousness of the moral law, or the moral law itself to be this “fact as it were (*gleichsam als ein Faktum*),” while the reality of freedom can

only be *deduced* from such a fact, being the condition of its possibility. As Kant explains already in the Preface, the moral law “is the condition under which we can first *become aware* of freedom” (CPrR 5:4/140). “Whereas freedom is indeed the *ratio essendi* of the moral law, the moral law is the *ratio cognoscendi* of freedom. For, had not the moral law *already* be distinctly thought in our reason, we should never consider ourselves justified in assuming such a thing as freedom (even though it is not self-contradictory). But were there no freedom, the moral law would *not be encountered* at all in ourselves” (*ibid*). The moral principle serves as the principle of the deduction of freedom, since no experience can prove even the possibility of this latter (cf. *ibid* 47/178).

Did Kant then change his mind in the less than three years intervening between the Second and the Third Critique? (Returning perhaps to the argumentative strategy of the *Groundwork* where he did attempt to ground the objective validity of the moral law on the assumption of freedom, the necessity of which he justified, at least partly, with reference to the spontaneity of theoretical reason.) Highly improbable, since three years later, in *Religion within the Boundaries of Mere Reason*, he clearly restated the standpoint present in the Second Critique: “[T]he concept of the freedom of the power of choice (*Willkür*) does not precede in us the consciousness of the moral law but is only inferred from the determinability of our power of choice through this law as unconditional command.” (*Rel*, 6:50/93)

But already with the text of the *Critique of Practical Reason* things are more complicated, or at least more messy. For among the eight well-known formulations of the idea of a “fact of reason” one (cf. CPrR 42/173) explicitly identifies it with autonomy, the concept of which is consistently characterized by Kant as that of positive freedom. Most interpreters regard this as a rather unfortunate shortcut that can be left aside,³ to concentrate on the truly troubling problem: is the Kantian “fact of reason” something subjective (i.e. our consciousness of the moral law) or objective in the meaning of the moral law itself.

This approach perhaps could be justified, if the *Critique of the Practical Reason* did not raise another (and maybe connected) puzzle concerning the status of freedom in Kant’s practical philosophy. Freedom, be it a fact of reason directly attested by a practical ex-

perience or a necessary conclusion drawn from such a fact, is in any case an idea “cognized (*erkannt*) assertorically” as “perfectly justified” and “objectively real,” nay “unavoidable,” even if only in practical respect (cf. *ibid* 105/224 and 55/184). But Kant then, in the second book on *Dialectic*, characterizes freedom—alongside with the idea of God and immortality—as a *postulate* of pure practical reason (cf. *ibid* 132/246, 133/247, 142/254 etc.). Such a postulate is “a *theoretical* proposition, though one not demonstrable as such, insofar as it is attached inseparably to an *a priori* unconditionally valid practical law” (*ibid* 122/238). What is postulated in such a way is not objectively, but only subjectively necessary (being based on a need), it is a “necessary hypothesis” for us—freedom as postulate is a “matter of faith (*res fidei*),” not *scibile*, but only *credibile* (cf. *CPrR* 11/145 and *CPJ* 469/333).

All interpreters agree⁴ that freedom cannot be in one and the same sense both a fact (or an analytically valid conclusion from such a fact) and a postulate of practical reason. What this assumed difference of meanings consists in, however, is far from being clear. Partly, because Kant himself discusses only the ground and the meaning of the postulation of God and immortality. He never explicates in what sense is freedom a postulate, beyond the indication that this refers to the positive concept of freedom, to which he adds: “as the causality of a being insofar as it belongs to the intelligible world” (*CPrR* 132/246). This remark seems to be, however, quite uninformative, since *prima facie* it is true of freedom as autonomy as well. But it is also difficult to ascribe to postulated freedom, a clearly distinguished sense, since he repeatedly underlines both in the Second and the Third Critique that it is freedom as autonomy, the objective reality of which is undoubtably attested by the moral law, which alone provides the ground and determination for the other two *a priori* ideas of pure reason. Already at the very beginning of the *Critique of Practical Reason* he declares: “Now, the concept of freedom, insofar as its reality is proved by an apodictic law of practical reason, constitutes the *keystone* of the whole structure of a system of pure reason, even of speculative reason; and all other concepts (those of God and immortality)... now attach themselves to this concept and with it and by means of it get stability and objective reality, that is, their *possibility* is *proved* by this: that freedom is real, for this idea reveals itself through the moral law” (*ibid*, 3–4/139). This would seem to leave no

particular function and space for an idea of freedom as mere postulate. In what sense then can it have a distinct meaning?

These questions and difficulties provide perhaps some justification to return again to the much discussed topic concerning the status and meaning(s) of freedom in the context of Kant's practical philosophy.

I

The idea of a "fact of reason" is a paradoxical notion, in fact an oxymoron. For facts fall under the category of actuality, i.e., they are necessarily bound up with some receptively-given sense intuitions.⁵ Reason (in logical sense the faculty of mediate inference) cannot be, however, the source of any fact, for it "never applies itself directly to experience or to any object, but to understanding, in order to give to the manifold of the knowledge of the latter an a priori unity by means of concepts..." (CPR B359/303). A "fact of reason" is therefore only a "fact as it were"—it is "not based on any intuition, either pure or empirical" (CPrR 31/164). It is, however, immediately given in any act of the practical employment of reason. It is necessarily and *unavoidably effective* as an underivable principle, whenever we rationally, deliberately decide upon some course of action—as Kant formulates it: "as soon as we draw up maxims of the will for ourselves" (*ibid.*, 29/163). Such a "fact" is something that "imposes itself" upon us whenever we think: What is the right thing to do in some particular circumstances? And imposes itself upon us not in the way sense intuitions are given, over the objective meaning of which we (i.e., our understanding) dispose (since in themselves they are "blind"). It is practically given *as a reason* dictated by reason whose meaning we are to understand (and, of course, obey).

Among the Kantian formulations explicitly mentioning a "fact of reason" some are opaque, or at least ambiguous, insofar as the referent of this term is concerned. There are, however, as already indicated, three quite different ideas that are unambiguously named in such a way in the Second Critique. Namely: the subjective consciousness of the moral law, the moral law itself as objectively obligating and autonomy in the principle of morality, inseparably connected, indeed identical with the consciousness of the freedom of the will. Among these three, it is certainly the consciousness of the moral law

that represents the *minimal* and—within Kant’s moral philosophy—evident interpretation of the term. For he never ceases to argue that “the *most common practical use of reason*” demonstrates that “every natural human reason cognizes (*erkennt*) the moral law as a fact that precedes all subtle reasoning about its possibility and all the consequences that may be drawn from it” (*ibid.*, 91/213). “The human being (even the worst) does not repudiate the moral law, whatever his maxims... The law rather imposes itself on him irresistibly, because of his moral predisposition” (*Rel* 36/ 82).

“But how is consciousness of that moral law possible?”—Kant himself poses the question (*CPrR* 30/163). For the undoubtable and immediate awareness of the moral law present in “every natural human reason” certainly cannot mean the explicit cognition of its supreme principle, the categorical imperative in its abstract generality. Kant began the Second Critique by arguing that even the great philosophical minds of humanity failed to recognize it in its purity and objectivity, in fact replaced it with more or less refined principles of heteronomy. “The moral cognition of common human reason,” indicates Kant already in the *Groundwork* (4:403–4/58), “admittedly does not think [its supreme principle] so abstractly in a universal form, but... it actually has always before its eyes and uses as the norm for its appraisals.” Since this kind of “seeing” is not some specific moral intuition—as in English moral sense theories—the possibility of which Kant resolutely rejects, what kind of givenness is that? In what way can the consciousness of the moral law be a “fact”?

Kant answers this self-posed question by an analogy. “We can become aware of pure practical laws just as we are aware of pure theoretical principles, by attending (*achthaben*) to the necessity with which reason prescribes them to us and to the letting aside of all empirical conditions to which reason directs us. The concept of pure will arises from the first, as consciousness of a pure understanding arises from the latter” (*CPrR* 30/163).

This is an enlightening parallel. The correct and explicit, abstract understanding of the *a priori* principle of causality (to take this example) is the result of a long historical development of philosophical reflection. Reflection, however, can disclose this law only because it is “*always already there*,” even in the simplest perceptual experience. It is “there” in the sense that it is necessarily *operative* (without being thematic) in experience as a rule of *a priori* synthesis of the par-

ticular, given data of senses according to its own "schema." (This also means, in dependence of the past experience of the perceiving subject to be verified or falsified by future experiences.) Analogically, we can be conscious of the moral law, because the *moral law itself is always already operative*, whenever we, as practical agents, deliberate what to do or *post factum* justify our action. It is operative, however, not as a rule of synthesis of the passively received data of the senses, but as the procedure of universalization exercised (primarily) upon our sensuous incentives, i.e., inclinations present in the given situation. It transforms these latter into maxims, i.e., subjective practical rules that *prima facie* may be accepted and followed by everybody else, *and* simultaneously tests their genuine universalizability. Therefore it is not a problem for Kant how to infer or in any other way to "ferret out" from the consciousness of the moral law as a subjective mode of awareness, this being a "fact," the objective validity of this law itself. For the first is only possible, if the law itself is actually present in this consciousness as if it were a fact. But it is actual, a "fact," not in the sense of being passively received as given (a *Datum*), but by being *realized, actualized* (a *Factum*) in the activity of our reason in every concrete case, when we rationally decide, i.e., in the strict sense of this word the will to do something.⁶ Whenever I deliberately act so that what is done can and must be attributed to *myself* as a rational being and thus needs justification, I inevitably realize in the very process of making my decision the moral law, and I am necessarily "dimly" or clearly—also conscious of this "fact."⁷

The moral law as a fact of reason is, however, not only the infallible criterion of the rightness or wrongness of our intended maxims. It provides by itself alone a reason and incentive for action, an interest dictated solely by our own reason and capable to determine immediately the will as *Willkür*. Though the moral law has thus an immediately commanding authority for us, it only obligates, not necessitates the will. For what it often demands, nay usually, stands in opposition to some of our empirical inclinations and interests, determined by that striving toward happiness which is a necessary constituent of our sensuous being as finite subjects. Be it the result of a mere weakness as incapacity or a positive propensity to evil, we tend to reverse the commanded by reason hierarchy of incentives, to make "the incentives of self-love and their inclinations the condition of compliance with the moral law—whereas it is this latter that, as

the supreme condition of the satisfaction of the former, should have been incorporated into the universal maxim of the power of choice as the sole incentive" (*Rel* 36/83).

In the case, however, when we *do* act morally, i.e., not only in conformity with, but also for the sake of the moral law as sole incentive, we do *enact* our freedom, and in such an action we directly "experience" it as a "fact," as a capacity of our being now directly exercised. The morally upright man, when acting from good will alone, consciously realizes his freedom—he knowingly sets aside all what his sensuous nature may make him to wish or any external authority may demand, to follow freely what his own reason commands him as a rational being to do. Acting from duty the agent "makes" his autonomy—its reality in action—a fact, both of, and for his reason.

The only problem is that we never can know with any degree of certainty that we (and, of course, even less concerning others) actually did act from pure moral interests. "For a human being cannot see into the depth of his own heart so as to be quite certain, in even a *single* action, of the purity of his moral intention and the sincerity of his disposition, even when he has no doubt about the legality of the action" (*MM* 6:392/523). Self-conceit is an unprovable propensity of our finite nature: "we like to flatter ourselves by falsely attributing to ourselves a nobler motive, whereas in fact we can never, even by the most strenuous self-examination, get entirely behind our covert incentives" (*Gr* 407/61).

Thus while freedom as autonomy is a fact of pure practical reason, something knowable (*scibile*) with certainty in the experience of moral action, the occurrence of this latter represent a condition, the fulfillment of which not only cannot be generally assumed, but—much more importantly—in no case ever can be ascertained. It is this epistemic scruple that makes necessary to demonstrate the reality of freedom independently of its being a so conditioned fact: to deduce it from the unconditionally obligating character of the moral law as its own existential condition (*ratio essendi*). For the moral law itself is an "apodictically certain" fact of pure practical reason, since it is realized in every act of practical deliberation, i.e. in every case when a rational being *wills*, in the true sense of this word.⁸ That willing, which alone makes an action our *own*, is possible only under the conditions of autonomy, or—what is the same—that moral laws "are possible only in relation to the freedom of the will" (*CPrR* 46/177).

This is argued by Kant first of all negatively. If not the self-legislation of our own reason, then ultimately it is only the principle of happiness that can be thought as the determining ground of the will. This principle, however, though it is (as a law of nature) subjectively necessary, objectively, in its content, is radically contingent. What it demands (more exactly: prompts) “can and must be very different in different subjects” (*ibid* 25/159). Therefore it cannot account for the universally obligating character of the moral law, thus for the very possibility of willing either.

This deduction of freedom also sheds light upon what is and what is not involved in Kant’s epistemological “agnosticism” concerning the possibility of an insight into our true motives. For once freedom as autonomy is assumed, the moral “ought” directly implies the “can.” What the moral law commands are not particular actions as temporal events in the phenomenal world, whose possibility is determined by empirical conditions, being “a question of one’s power and one’s physical ability.” Its demand concerns the way of acting (*Handlungsart*) in the sense of the kind of maxims chosen by the agent as the principle of its will, the general rule upon which it decided to act. And this latter is always in the power of its free will: “...in regard to this, what he wills to do, that he also can do” (*ibid* 37/170). The fact that we never can be certain concerning the ultimate grounds of the choice of our maxims, does not imply that Kant is in doubt whether human beings ever actually perform acts of genuinely good will. What the moral law commands, is clear to the most common human understanding and is always in our power to do. Even though evil is radical, i.e. “entwined with humanity itself and, as it were, rooted in it” (*Rel* 32/80), predispositions toward the good also “belong to the possibility of human nature” (*ibid* 28/76). The perversity of the human heart, the frailty of human nature makes the occasional deviations of our maxims from what the categorical imperative demands an ineradicable feature of our conduct. Our life is a constant struggle between good and evil. But while we never can (nor should) be certain about the goodness of any single action of our own,⁹ such acts do occur, they are even relatively common. Kant is deeply opposed—this is one of the basic motives of his critique of Stoicism—to the “heroization” of virtue, to its identification with “supermeritorious” (*überdienstliche*) actions. His morality is that of “common and everyday obligations” (*CPrR* 155/264), a moral of human decency.

II

The question concerning the relation between the “ought” and the “can” is raised again in the Kantian discussion of the postulates of pure practical reason. It emerges, however, in a radically different context and with a different meaning. The book on *Dialectic* in the *Critique of Practical Reason* no more deals with the problem: can pure reason be at all practical, can we, as rational though finite agents—and under what conditions—act on reasons that are valid for all rational beings in general. These questions have already been positively answered, and the results of this inquiry—the objectivity of the moral law and the reality (in practical respect alone) of its precondition, the autonomy of the will—are now presupposed, since only on this ground can the new problem be meaningfully raised at all. This is the problem of *realization*.

This question concerns exclusively us, *finite* rational beings. For it asks whether our non-arbitrary, obligatory *ends* can be made actual at all. Ends, in the sense of some objects of a will to be effected through its action, presuppose the categorial distinction between possibility and actuality.¹⁰ These a priori categories of understanding (the categories of modality in general), though necessary for our sensibly conditioned cognitive faculty, cannot be applied to the realm of the intelligible, are not valid for a holy will (cf. *CPJ* 401–404/272–274). The moral law as categorical imperative is, of course, a purely formal practical principle that commands our will regardless of any end. But the finite will as the capacity of free choice (*Willkür*) can act only by positing some end to be realized in the world. “For without some end there can be no will, although, if it is a question only of lawful necessitation of actions, one must abstract from any end and the law alone constitutes its determining ground” (*CS* 8:279/282). The moral law, to be obligating for the finite will as an imperative, must itself be capable to determine ends which are duties and as practical *reason* also the *unconditioned totality* of all the morally approved ends as the commanded object of the will. This is the highest good—“happiness distributed in exact proportion to morality” (*CPrR* 110/229) or “universal happiness combined with and in conformity with the purest morality throughout the world” (*CS* 279/282). This is our final end that follows necessarily but *synthetically* from the application of the moral law to the finitude of our

being.¹¹ “[T]he proposition: ‘Make the highest possible good in this world your own ultimate end,’ is a synthetic proposition *a priori* which is introduced by the moral law itself, and yet through it practical reason reaches beyond the law. And this is possible because the moral law is taken with reference to the characteristic, natural to the human being, of having to consider in every action, besides the law, also an end (this characteristic of the human being makes him an object of experience)” (*Rel* 7/60).

“It is a duty to realize the highest good to the utmost of our capacity” (*CPrR* 144/255). But is it at all within the reach of our capacities? The highest good consists in a *systematic* connection between two distinct (though not contradictory) ends: the fulfillment of the moral law (virtue) and “deserved” happiness. The first is certainly “entirely in our power” (*CPJ* 471/335), but what about the second? Already in the *Groundwork* (395–396/50–51) Kant underlined how “weak and deceptive” a guide reason is insofar as the attainment of happiness in life is concerned. And what concerns any rule-governed connection between virtue and happiness, its existence is not only contradicted by all our experience of the injustice of the world, by “all the evils of poverty, illness and untimely death” (*CPJ* 452/318) that befall upon men independently of their moral worthiness or the lack of it. Such a systematic combination is outright impossible. For “any practical connection of causes and effects in the world, as a result of the determination of the will, does not depend upon the moral disposition of the will but upon knowledge of the laws of nature and upon the physical ability to use them for one’s purposes; consequently, no necessary connection of happiness with virtue in the world, adequate to the highest good, can be expected from the most meticulous observance of the moral law” (*CPrR* 113/231). How can we then even contribute to the achievement of an end, when what is in our power to do stands in no systematic relation to its realization? “To produce the highest good through the freedom of the will” (*ibid* 113/231) as our duty demands the impossible. However, if it is impossible for someone to do something, one neither can be obligated to do it. *Ultra posse nemo obligatur*. The “cannot” implies the “ought not.” For us, finite beings, the two meanings of the “can,” the can of willing and the can of doing, the can of decision and the can of accomplishment, completely fall apart. On the other hand, the duty to realize, or at least to promote the highest

good, though it is not contained in the moral law itself, in respect of our finite will it is necessarily connected to, and posited by this latter. If this duty is invalid, so is the moral law that imposes it upon us. "If, therefore, the highest good is impossible in accordance with practical rules, then the moral law, which commands us to promote it, must be fantastic and directed at empty imaginary ends and must therefore in itself be false" (*ibid* 114/231).

This devastating antinomy of pure practical reason is, as well known, solved by Kant in the Second Critique through the practical postulates of immortality and God's existence as the conditions under which the realization of the highest good is conceivable. These are subjectively and in practical respect alone necessary theoretical assumptions, objects of a rational faith. They determine what we may hope for on the basis of a unitary reason, at once theoretical and practical.

Kant's exposition of, and argumentation for, these two postulates, and the difficulties connected with them,¹² does not concern us here. What interests us, is the question: In what sense and for what reasons he joins to these two the *postulate of freedom*—in a meaning that must be distinct from the immediate or derived "fact" of autonomy?

The clearest proposal of interpretation has been offered here by B. Carnois (1987, pp. 118–121).¹³ He identifies the "postulated" freedom with the *autocracy* of practical reason, a concept that appears in Kant's writings in the nineties. In distinction from freedom as autonomy, grounding for all rational beings the *possibility* of following the self-legislated moral law, autocracy of the will denotes the *actual capacity* of a finite rational being to do so in spite of the countervailing natural inclinations. "[I]t involves consciousness of the *capacity* (*Vermögen*) to master one's inclinations when they rebel against the law, a capacity which, though not directly perceived, is yet rightly inferred from the moral categorical imperative" (*MM* 383/515).

This does not seem to be a satisfactory interpretation. The postulated freedom, alongside with the idea of God and immortality, is assumed to constitute the necessary condition of the principle realizability of the highest good. The difficulty in this respect, as disclosed by the antinomy of practical reason, is related to the presupposition of a systematic connection between virtue and deserved happiness, not to the actual accomplishment of acts of virtue. That

the latter is possible, because fully in our power owing to our autonomy, is completely sufficient and only this is assumed by Kant throughout the whole discussion. The postulation of the autocracy of reason (the concept of which in the Second Critique is not distinguished from that of the autonomy) is in this sense irrelevant in respect of the very problem and task that alone necessitates and legitimates all the postulates of practical reason.

At the same time it is also difficult to reconcile this interpretation with the text. While Kant never discusses explicitly the intended meaning of freedom as a postulate, he makes a number of dispersed, but quite consistent remarks concerning it. The so-conceived freedom is "a kind of causality" (*CPrR* 133/247), more specifically "the causality of a being insofar as it belongs to the intelligible world" (*ibid* 132/247) and is capable to determine its will according to the laws of this latter. It is explicitly related to "the *cosmological* idea of an intelligible world and the consciousness of our existence in it" (cursive by Kant, *ibid* 133/247). What is postulated is the idea of transcendental freedom as a *cosmological* concept, as "a power of absolutely beginning a state, and therefore also of absolutely beginning a series of consequences of that state" (*CPR* B473/409). Like the two other postulates, that of freedom also "grants" (*einräumt*) that to a speculative idea, merely problematic for theoretical reason, a real object belongs. The postulate thus makes transcendental freedom in its cosmological sense "immanent and constitutive," (*CPrR* 135/249)—of course, solely in practical respect and for practical employment as an object of rational faith, without making its explanation or comprehension possible.

What to understand by freedom as postulate, this is rather clearly indicated in the text, in a way that is completely consistent with Kant's treatment of the other two postulates. The question rather is how the so-conceived freedom relates to autonomy as "fact" of practical reason, on the one hand, and what specific function could such a freedom fulfill within Kant's moral philosophy, what could have motivated its introduction, on the other hand.

In moral action we make the autonomy of our reason in practice a "fact" and we are directly conscious of it. Moral experience presents us with the effective reality not only of practical, but also of transcendental freedom. As Kant repeatedly formulates it, in such actions the agent "puts himself in a different order of things," they

“transfer us, in idea” into the archetypal world of noumenal existence (cf. *Gr* 457/103, *CPrR* 43/175 etc). But, as we know, every single concrete case of such experience can be deceptive. This is not merely a question of undecidability. For not only every, but also *all* cases of moral experience, now in the broad sense, can be illusory, and on principle ground. This is the problem of *fatalism*, exemplified for Kant by such diverse systems of philosophy like that of Spinoza, Leibniz and Priestley. Even the effective actualization of the moral law in all processes of practical deliberation, that can only be conceived under the condition of the autonomy of the will, does not allow us to conclude validly to the reality of freedom in its cosmological sense: as an uncaused cause and the absolute spontaneity of a first beginning. It is still possible to think that the self-legislated and self-directed acts of our practical reason are ultimately and remotely determined—in a hidden for us way—by natural or intellectual mechanisms outside of our control. One perhaps can prove the fallacy of particular theories of this type, but theoretical reason cannot demonstrate the impossibility of such explanations in general. They are, of course, practically idle—we can act only under the idea of freedom. But the qualifications Kant consistently adds in these contexts to the assumed reality of freedom: “in practical respect only,” “merely for the practical use of reason” etc, serve first of all the end of reminding us not to draw metaphysical conclusions from this reality. For they cannot be validated in this way.

In the *Dialectic*, however, Kant himself draws such conclusions, certainly not as speculative dogmas, but as theoretical presuppositions having a necessarily practical reference in respect of our finite, therefore always end-setting will. These postulates have a *sui generis* practical warrant, certainly not independent of, rather grounded in the objectively obligating character of the moral law, but supplementing and complementing it. For through the duty to promote the highest good as our final end “practical reason reaches beyond the law,” “exceeds the concept of duties in this world,” adding to them a consequence “that is not contained in the moral law” (*Rel* 6–7/59–60). The paradoxical idea of a rational faith that in some sense is necessary, though neither demonstrable, nor a matter of obligation, and which then *a priori* determines what we can hope for, this idea is grounded in the paradoxical way the unity of reason manifests itself in finite beings like us. For theoretical and practical reason can

stand with us in unresolvable conflict (theoretical reason cannot disprove the standpoint of atheism and fatalism), but we can never accept and endorse such a contradiction between their principles. Reason as such demands an ultimate consistency of the way we think and act. This provides a *sui generis* warrant for the postulates though they, precisely by fulfilling such a demand, “exceed” both what pure theoretical reason and pure practical reason (the moral law as the practical principle valid for all rational beings), each taken separately, could validate.

Thus, also freedom as postulate “exceeds” what is contained in the idea of autonomy, be it an immediate or a “derived” fact of practical reason. As the cosmological idea of transcendental freedom it asserts that in genuinely moral action (always in our power) we not only “in idea,” but really “transfer” ourselves into the intelligible world as kingdom of ends, that as “uncaused causes” our moral ends have an irreducible effect in the world where our actions take place, in the world of sensuous existence. It asserts that morality truly can count in respect of the way this world is.

This, in a sense, also answers the question: What function does the postulate of freedom fulfill in respect of that immediate problem, in the response to which it is introduced—the realizability of the highest good? It does seem, however, that this answer does not fully exhaust the significance it has (and the burden it has to bear) within Kant’s practical philosophy. For it is also directly relevant for the solution of a new antinomy which is actually been created by the introduction of the idea of the highest good in the *Critique of Practical Reason*. This is a difficulty of which Kant is—or at least after the *Critique* becomes—painfully aware, and upon which his most perceptive critics, first of all Hegel, based their radical objection to his moral philosophy.¹⁴

This antinomy consists in the contradiction between the assumption of the radical autonomy of the moral agent, on the one hand, and the need in a divine assistance to realize its final end, on the other. The first implies that nothing can “be judged *morally* good except on the basis of what can be imputed to him [i.e. to the moral agent] as done by him” (*Rel* 51/95). The second asserts that, precisely in respect of its highest good, human reason itself is “conscious of its impotence to satisfy its moral needs” (*ibid* 52/96), that the fulfillment of this duty is possible only under the condition of an

“aid from another source,” divine grace as “something altogether beyond his control” (*CPrR* 101/220). Kant is no less aware than his critics that this is primarily a practical antinomy that can undermine the normative content of morality. The practical employment of our reason, he writes in the *Religion* (53/97), presupposes “a rule concerning what good we ourselves must *do* (with a particular aim [in mind]) in order to achieve something; to expect an effect of grace means, however, the very contrary, namely that the good (the morally good) is not of our doing, but of another being—that we, therefore, can only *come by* it by *doing nothing*, and this contradicts itself.”

This antinomy can only be solved, if we assume that the causality of divine grace and the causality of our freedom can be thought together in respect of one and the same action, if our moral actions can be simultaneously conceived as the fulfillment of an all-powerful divine call. In the idea of the highest good one must “consider one’s own deed at the same time also as the effect of a higher being” (*MPT* 8:263–264/31). *How* this is possible remains for us an “impenetrable mystery” (*Rel* 143/168). But it can be conceived as something possible, if we have a warrant (even if only a subjectively necessary one) to assume that through our moral actions we truly confer upon ourselves a “citizenship in the divine state” (*ibid*), really “transferring” ourselves into the kingdom of ends, in which we are both law-giving members and subjects to its laws (cf. *Gr* 433–434/83–84). This is the reason why Kant needs to affirm, as he does in the *Critique of Practical Reason* (cf. 105–106/224), that only the postulated freedom as the cosmological idea of our capacity to unconditioned causality can ground the idea of God, making possible its morally sound understanding—one that does not fall into heteronomy (cf. *CPrR* 105–106/224).

This solution to the difficulty concerning the compatibility of human freedom and divine grace, as Kant himself says, may be regarded as involving “an even greater difficulty,” being “hardly susceptible to a lucid presentation” (*ibid* 103/222).¹⁵ This is, however, not too high a price to pay for being able to close a gap, with the existence of which reason never could reconcile itself, that between the seemingly so different ways of its employment. The postulates of pure practical reason, by providing “real objects” for the merely problematic ideas of theoretical reason which for it are only empty possibilities, not only fill a “vacant place.” They thereby also fulfil an *im-*

manent need of theoretical reason, bring it to a completeness that it never could reach on its own—by fulfilling a “need from an absolutely necessary... practical point of view” (cf. *ibid* 142–143/254–255). They make manifest for us the unity of our reason as spontaneous activity in its thinking and doing.

John Rawls therefore rightfully pointed to the coherentist aspect of Kant’s argumentation in moral philosophy, making reason “self-authenticating as a whole” (Rawls, 2000, p. 268). It seems, however, that Kant himself was less serenely satisfied with such a legitimization of the claims of reason than Rawls appears to be.

III

During the decade following the publication of the *Critique of Practical Reason*, Kant, with remarkable energy, has been extending, attempting to complete, his system. His aesthetics, philosophy of organic life and natural teleology, philosophy of religion, philosophy of right and virtue ethics were all realized during these years. At the same time, however, he returned—both in these great works and in the numerous shorter essays written during this period—to the questions that he seemingly answered and settled in the Second Critique, restating, modifying, revising and in some cases perhaps also abandoning these answers. One certainly cannot speak of an unambiguous, unilinear “evolution” of his views in respect of these problems. We can perceive, however, definite general tendencies of change. This is primarily manifest in regard of two problem-complexes, certainly closely interrelated, though at times appearing in different contexts. The first concerns the idea of the highest good, the second the meaning and function of the postulate of God’s existence.

In respect of the first, one can observe a gradual “secularization” of this idea that ultimately leads to its loss of relevance for, and disappearance from, Kant’s practical philosophy proper.¹⁶ In the *Critique of Practical Reason*, it is our unconditional duty to promote the realization of the highest good (a task conceived here from the standpoint of the individual—of course, all individuals) that provides the sole warrant for all three postulates. For the realization of this final end is possible only in another world after death, in the eternal world of noumenal existence, owing to the justice of its moral ruler, God.

However, already the *Critique of the Power of Judgment* introduces two far-reaching changes into this conception. On the one hand, it situates this problem in the context of the justifiability of a teleological view of nature, more precisely, in that of the radical question: can we in general assume that what is, has a sense, fulfills some end? And in answer to this question (no more provided by reason, but by the reflexive power of judgment) Kant now offers, in §86, the outlines of an *independent* from the idea of the highest good argument for the necessity of postulating the existence of the divine author of the world. He even—though, as usual, in a quite inconsistent manner—terminologically distinguishes this “ethicotheology” from the “moral theology” based on the idea of the highest good. Perhaps it is this disburdening of the latter from being the sole warrant for the postulates of a rational theology that now allows Kant to conceive the realization of the highest good as possible in this earthly life through our own activities. He now emphatically states: “The moral law... without depending on any sort of ends as a material condition, yet it also determines for us, and indeed does so *a priori*, a final end, to strive after which it makes obligatory for us, and this is *the highest good in the world possible through freedom*” (CPJ 450/315—italics by Kant; see also 469/333). He never explicates how this is to be understood, only underlines its fundamental condition: the existence of a moral cause of the world as its omnipotent author, who created a nature, in general amenable, favorable not only to our cognitive and aesthetic needs, but also to our moral ends. In the result, the postulate of immortality becomes in the Third Critique marginalized—affirmatively mentioned in a number of times, but no more playing an argumentative role.

It is in the *Religion Within the Boundaries of Mere Reason*, that this idea of the highest good realized in the world becomes filled with content. It is specified as the “ethical commonwealth,” “a kingdom of God on earth.” In opposition to its ancient tradition, the idea of the *summum bonum* always had been conceived by Kant—even when he treated it primarily from the viewpoint of the individual—as a world-concept (the “moral world” of the First Critique, the kingdom of ends of the *Groundwork*).¹⁷ This now receives a this-worldly, social interpretation. The ethical commonwealth is “a society in accordance with, and for the sake of, the laws of virtue—a society which reason makes it a task and a duty of the entire human race to establish in

its full scope" (*Rel* 94/130). Kant particularly emphasizes that the establishment of such a "universal republic based on the laws of virtue" (*ibid* 98/133) demands more than the unwaveringly good will of its participants. It requires a constitution and public laws together with executive and juridical power. It needs a particular form of social organization, which—in contrast with the political state being concerned only with the external legality of actions—he designates as the *universal church*. This is not an accidental choice of terminology. For it is not only the case that such a society cannot be brought into being by the power of well-willing individuals alone, but is in need of divine assistance—it is also only God, who can be thought as the supreme lawgiver and sovereign of such an association,¹⁸ though the so-established laws were not of moral character, if they were not freely self-legislated also by every of its members.

The *Religion* makes perhaps particularly clear that all the Kantian utopias of a "moral world"—be they transcendent or immanent—are to a significant degree universalizations and transpositions into a purely ethical plane of Rousseau's conception of a political state of liberty, together with all the paradoxes of this latter. First of all this refers to the idea of free citizens, each being a legislator and thus sovereign, while at the same time the sovereign authority is radically distinguished not only from each, but also from all of them, since the will of all is not at all the general will. (The reproduction of this paradox is particularly clear in the *Groundwork*, 433–434/83–84.) And God as the supreme legislator of self-legislated laws only repeats in terms of an ethicotheology Rousseau's idea of the charismatic, "divine" legislator, who must be a complete outsider to the community, for whom it establishes the laws of its immanent freedom.¹⁹

It is perhaps not quite implausible to suggest that Kant's ultimate ideas concerning the morally requested, ideal form of human community, as they are presented in the *Toward Perpetual Peace*, and in the First Part of *The Metaphysics of Morals*, represent a break with Rousseau, no doubt under the influence of the lessons of the French Revolution. The secularization of the ideal of an ethically grounded form of human collectivity, as the hoped-for end of our actions in the world, now becomes complete. With this also the very idea of the highest good disappears from these writings. For "the kingdom of pure practical reason and its *justice*" (*PP* 8:378/344) now means the peaceful world federation of all states, each with a republican consti-

tution—the great formulation of the ideas of an enlightened liberalism. This implies a radical break with the very idea of an *ethical* commonwealth, since the realization of such a political utopia demands “not an ever growing quantity of *morality* with regard to intentions, but an increase of the products of legality in dutiful actions whatever their motives.” Thus such a “cosmopolitan society” can be actually created “without the moral foundations in humanity having been enlarged in the least” (*CF* 7:91–92/307). The idea of a “moral world” now appears as a sweet, but also dangerous dream, a case of “enthusiasm,” usually connected with “moral terrorism” which predicting the Domsday dreams of a “renovated world” to arise out of its flames (*ibid* 81/289–290). And neither is there any more a transcendent guarantee of the realizability of this, much more modest utopia. Though nature itself prompts us in this direction, through that dialectical interaction between our needs and experiences which Kant describes as the “unsocial sociability” of man, the approximation toward it depends on our moral actions that are in principle unpredictable. Our progress toward it is no more a postulate, but a regulative principle of practical reason.²⁰

With these changes, transformations take place in the meaning and function of the postulate of God’s existence. This being valid in practical respect alone always meant for Kant that “our concern is not so much to know what he is in himself (his nature) but what he is for us as moral beings... And apart from this relation we cognize nothing about him” (*Rel* 139/165). As long as it is our duty to promote the realization of the highest good that warrants the necessity of this postulation, what is *meant* in general by such a “relation” is rather clear. We need divine assistance, something beyond our control, to conceive the realizability of our final end. This, however, involves its own difficulties as far as the more specific character of this assumed relation is concerned.

In the Second Critique, where the achievement of this end can only be conceived in the intelligible world of the afterlife, the meaning of this divine assistance is clear. Only the activity of God’s grace can create at all a systematic connection between virtue and deserved happiness. It then remains, however, unclear, what *we* can do for this *beyond* that what we are in any case demanded to do in fulfillment of the command of categorical imperative that, as a “fact” of practical reason, obligates us directly, without any further condition.

It makes incomprehensible what could constitute the specific content of such a duty in respect of which it would “exceed” the moral law.²¹ Once, however, the realization of the highest good is conceived as a task for us in our earthly life, the already mentioned contradiction between the autonomy of the moral agent and the postulated “aid from another source” becomes evident, something that must be faced. The offered solution—the complete coincidence of the causality of our freedom and that of the divine grace in regard of one and the same actions—makes, however, the very relation that practical reason assumedly allows us to cognize an unfathomable mystery.

When the idea of the highest good drops out from Kant’s writings directly concerned with practical philosophy, the need in this mysterious solution also disappears. What practical reason obligates us to effectuate as our final end is not only realizable in this world, but also by our (certainly morally guided) powers alone. What function can then the postulation of God’s existence (which is certainly retained) fulfill? What is its significance precisely for us as moral beings? It seems to me that Kant’s fragmentary responses to such a question in the relevant writings of the later nineties point in two (not necessarily incompatible) directions.

On the one hand, he seems to suggest²² that it can fortify us in our moral resolution to do all what is in our power to contribute to the actualization of our collective final end in the world. We well can understand that the realization of these political utopias—states with republican constitution and perpetual peace between them—is not *impossible* for us. But owing to the limitations of our reason we cannot at all comprehend how particular moral actions can at all contribute to their achievement. The assumption of the moral ruler of the world would provide support (one would suspect: a psychological one) for the hope that what we ought not merely to will, but to do, we also can.

On the other hand, in other places Kant seems to suggest that God’s existence is the sole ground capable to make comprehensible for us our own existence as *moral* beings. It makes representable for us the unconditionally obligating power of the moral law as a sheer “fact” of our consciousness. For we legislate, but do not “create” the moral law—being capable to be moral is not an accomplishment of ours, some particularly meritorious act of our own. “[I]f by nature (in the practical sense) we mean our ability to achieve certain ends

by our own powers in general, then grace is none other than the nature of the human being insofar as he is determined to action by a principle which is intrinsic to his own being, but supersensible (the thought of his duty). Since we want to explain this principle, although we know no further ground for it, we represent it as a stimulus (*Antrieb*) produced in us by God, the predisposition to which we did not establish in ourselves, and so, as grace" (CF 44/268).

It is, however, in the *Opus Postumum*—in this not only unfinished work, but also a document of Kant's own struggle with the decline of his intellectual power—that he fully returns to this question of the relation of God's postulated existence to our moral being, to rethink it anew. He deals with it in the latest parties of the manuscript (parts of Fascicle VII and the Fascicle I), ultimately within the framework of an envisaged final synthesis, "the highest standpoint of transcendental philosophy."²³

The following is one of Kant's many attempts to formulate a title for this last project of his:

"GOD, THE WORLD AND THE SUBJECT WHICH /
CONNECTS BOTH OBJECTS, / THE THINKING BEING IN THE
WORLD. / GOD, THE WORLD, AND WHAT UNITES BOTH /
INTO A SYSTEM: / THE THINKING, INNATE PRINCIPLE OF
MAN IN / THE WORLD (MENS). / MAN AS A BEING IN THE
WORLD, / SELF-LIMITED THROUGH NATURE AND DUTY" (OP
21:34/237).

The world and God represent the two ideally separated *maxima* of that what interrelated in various ways and various proportions are inseparably present in all our self-positing activities: receptivity, determination²⁴ and spontaneity, freedom. "Each of the two contains a maximum and there can only be one of each. 'There is one God and one world.'" (*ibid* 21:20/226) The world as a singular totality (to be strictly distinguished from the indefinite multitude of things) is the ideal of absolute receptivity and determinability—in principle to be thought as in our power. God is the ideal of absolute spontaneity and freedom, to be thought as the absolutely commanding power over us and over everything. It is we, free beings in the world, who are, however, morally restricted in the use of our freedom, who not only interconnect these two ideals standing in "real opposition," but also posit them as ultimate conditions of our self-understanding. "God and the world are ideas of moral-practical and technical-practical reason... Both together in one system, however, and related

reason... Both together in one system, however, and related to each other under one principle, [are] not substances outside my thought, but rather [they are] the thought through which we ourselves make these objects (through synthetic *a priori* cognitions from concepts) and, subjectively, are self-creators (*Selbstschöpfer*) of the objects thought" (*ibid* 21:21/228).

Just as the world conceived as a single totality, also God is a "thought-object (*Gedankending*), *ens rationis*," "one's own creation" (*ibid* 21:27/231). This does not mean that the idea of God is something fictitious (*erdichtet*)—it is a necessary concept of pure reason. Only this ideal allows us to represent for ourselves the unconditionally obligating power and majesty of the categorical imperative as a *holy* law. Every thinking being cannot but assume God's existence, "but only for the sake of recognition of our duties as divine commands" (*ibid* 22: 126/206). "There is a being in me, which is different from me and which stands in an efficient causal relation (*nexus effectivus*) toward myself (*agit, facit, operatur*); itself free... it judges me inwardly (justifies or condemns); and I, man, am this being myself—it is not some substance outside me" (*ibid* 21:25/230). "*Est deus in nobis*" (*ibid*, 22:130/209).²⁵

It is only these two ideals of reason, in relation to which we can come to self-understanding, to the understanding not only what we are, but also of our vocation, of our highest (though never fully realizable) possibility. Only in this way we can form the *ideal of man*. This is *wisdom* (*Weisheit*). "The love of wisdom is the least that one can possess; wisdom for man is the highest—and hence transcendent. Transcendental philosophy is the progression from the latter to the former" (*ibid* 21:155/255). Wisdom represents the complete unity of theoretical and practical (or as Kant now formulates it: technical-practical and moral-practical) reason. Wise is the man who in all circumstances of life knows what it *can* do, to *accomplish* what it *ought* to do; for whom there is no whatever gap between the two meanings of the "can": the can of decision and the can of realization.

What are the consequences of these transformations in Kant's conception of transcendental philosophy itself for his practical philosophy in the proper sense? What is his last moral message to us? Given the difficulties of interpreting what he has actually written in this last manuscript, to query: what he could have perhaps concluded, this is not only a highly risky enterprise, but also one that

courts the (moral) danger of self-deceit: shifting the responsibility for some thoughts, that one maybe finds in some respects attractive, onto somebody else, an authority. There is, however, at least one strong indication in the text itself that Kant envisaged such—and not at all self-evident—consequences. This is demonstrated by the fundamental re-evaluation of the concept of the *right* on these last pages of the manuscript.

In the *Opus Postumum* the concept of right is no more related to the sphere of legality alone, concerning the external use of freedom, whose pure principles are to be derived from, but also must be strictly distinguished from the commands of morality. Now it is the fact that we are subjects of rights that makes us a person, a free and moral being. “The moral man is a *person*; that is a being capable of rights, who can encounter wrong or can consciously do it, and who stands under the categorical imperative... A person is a rational being who has rights” (*ibid* 22: 55–56/214). “*Personality* is the characteristic of the being who has rights, hence, a moral quality” (*ibid* 21:12/220). The holiness of the moral law now first of all means the sanctity of human rights. With this also a subtle change occurs in the way the accomplishment of the categorical imperative is understood. The emphasis shifts from universalization (setting aside all the sensuous, therefore private incentives) to unification: the categorical imperative “extends to all rational world-beings and through which all world-beings are united” (*ibid* 22: 105/198). This at least implies a change in the conception of freedom itself. Wisdom is the necessary ideal for all of us, humans. We cannot conceive ourselves to be free, if our best, rational intentions are regularly, constantly frustrated, are made to fail in their execution. The moral “ought” now implies not only the can of decision, but with an obligatory force also the can of realization. “If I *ought* to do something, then I must also be *able* to do it, and what is absolutely incumbent upon me, I must also be capable of *performing* (*verrichten*)” (*ibid* 21:16/223—emphasis mine, G. M.). The so-conceived freedom, however, can only be attributed to the wise—for us, who only strive to reach this ideal, freedom in this strong sense is neither a fact, nor a postulate of practical reason, but a *regulative idea* of our conduct.

This also means that the freedom of choice is now constrained not only by the inward commands of the moral law, but also by the rights of others. This opens up a field of possible conflict between

the rights of humanity in my own person and the rights of other men (cf. *ibid* 22:56/214). Nevertheless, Kant no more offers any utopias for its final solution, any a priori defined objects for our final hope. And not because they were illegitimate—reason in its drive for the unconditioned is necessarily moved to form ideas of a final end. In fact, both the idea of the highest good and that of a connection between virtue and happiness are mentioned in a few isolated places in the manuscript (cf. 22:129, 21:11, 22, 149 etc.). They play, however, no whatever role. Perhaps (and this is truly a sheer surmise) because Kant came to realize that the construction of such utopias is not the task of reason, but that of creative imagination. For already in the *Groundwork* (418/71) he indicated that “happiness is not an ideal of reason but of imagination.” We need to have objects for our hope—and (within the boundaries imposed by the laws of reason) we are free to make them according to our imaginative insights.

Ultimately, however, there can be only one obligating object for our hopes, an object never achievable once for all as a stable state or possession—the *hope to be free* in the strong, regulative sense of freedom. The moral law in us infallibly commands what we ought not to do under any conditions. With the same power and clarity it also demands that we not only intend, but also *do* all what is in our power to maintain and fortify the rights of all men, including our own. And we can only hope that in the humdrum or perhaps more tiring circumstances of our life we shall be wise enough to know what we really can do for this end. Because we ought.

Notes

1 The numbers before the slash mark refer to the Akademie edition of the *Gesammelte Werke* (thus 5:468 to page 468 of volume 5), the numbers after the slash to the page of the appropriate English translation of the work in question as indicated in the bibliography. The only exception concerns the “Critique of Pure Reason” to which, in the usual manner, the references indicate the pagination of the first (A) and second (B) German edition.

2 See e.g., L. W. Beck, 1960, pp 166ff., or the papers of J. Rawls and H. E. Allison in the volume edited by E. Förster (1989).

3 E.g., Beck (1960, p. 167) asserts that autonomy here stands simply for the moral law. But see also Allison, 1989, p. 116 or Rawls, 2000, p. 260.

4 Only a few commentators did, however, pay a more detailed attention to this

topic. Among them see G. Krüger, 1967, pp. 199ff; P. Ricoeur, 1974, pp. 418ff and B. Carnois, 1987, 114ff.

5 In the *Critique of the Power of Judgment* (5:468/332) Kant, however, extends the concept of fact beyond this usual meaning, to the domain of real possibility. This does not alter, however, its ultimate dependence upon what can be empirically given in actual experience.

6 All this, of course, merely indicates a line of interpretation that would need further elaboration (e.g., the role of the “typic” in the procedure of universalization etc.). I take it, however, that the distinction of, and the relation between, the “facticity” of the consciousness of the moral law and that of the moral law itself essentially corresponds to what Beck has drawn between the “fact for” and the “fact of” the pure reason (cf. Beck 1960, pp.168–170. See also O. O’Neill (1989, pp. 64–65) and, in spite of significant differences of interpretation, Allison’s remarks (1989, pp. 120–121) concerning the “performative” character of the moral law.

7 This, no doubt, presupposes an exceptionally “strong” conception of deliberate action and its legitimacy is, of course, contested. Compare e.g., G. Preuss (1981) with the already referred to writings of Allison. Kant’s argumentation for this viewpoint cannot be discussed here in any detail. Ultimately it is based upon his conception of reason. A being who acted upon his freely accepted (“incorporated” into its maxims) needs and desires, however “rationalized”—through rules of skill and precepts of prudence—they be, would not in Kantian sense be rational, certainly not in the same meaning we, humans are. (The only passage in Kant’s published writings, where he at all envisages the possibility of such a form of merely pragmatic—we would say: instrumental—rationality, occurs in a footnote in *Rel* 26/74–75. He makes, however, immediately clear that this certainly would not be our reason.) For decisions to act arrived in such a way would be radically egocentric, since ultimately based upon the purely subjective feelings of pleasure and displeasure. Such a being would not be able to deliberate and act rationally in the assumed by Kant sense—it would not have, in the strict meaning of this word, a will as the higher, rational faculty of desire (and could not be regarded as free in the appropriate sense). Because reason for Kant represent the immediate unity of individuality and universality. “To reason” means to think for oneself (the activity of reason as autonomy) but consistently from a universal standpoint, from the standpoint of everyone else (cf. *CPJ* 294–295/174–175).

Perhaps one may make here a rather speculative remark. Such a conception of reason could allow Kant—let say with Ricoeur: a “post-Hegelian Kant”—to answer one of the most basic objections raised against his moral philosophy. This refers to the assumed irreconcilability of the universal validity of the categorical imperative as a “fact” of the most common human reason with elementary observations (not unknown to Kant) concerning the historical (pre-modern) forms of morality and with the idea of a moral development that he did uphold at least in some of his writings. Now one could argue that a procedure of universalization as enactment of the moral law in the sense of setting aside all the subjective and private conditions may well be present in all the historical forms of human practical consciousness, while the *scope* of the envisioned universality—the circle of those

whom I regard as fellow human beings—may well change. And some ideas of Kant, e.g., concerning the moral role of Christianity as the first universal religion “valid for the world and not for one single people” (*Rel* 127/156), may be seen as pointing in such a direction.

- 8 “...were there no merely formal laws of the will sufficient to determine it, then neither could *any higher faculty of desire* be admitted” (*CPrR* 22/156).
- 9 What concerns the others, it follows from the fundamental duty of respect, that we are commanded (as a duty of virtue) “not to take malicious pleasure in exposing the faults of others..., but rather throw the veil of philanthropy (*Menschenliebe*) over their faults, not merely by softening our judgments, but also by keeping these judgments to ourselves” (*MM* 466/582).
- 10 This conception of the end is to be distinguished from the “end in itself” that must “be thought not as an end to be effected but as an *independently existing* (*selbständiger*) end” (*Gr* 437/86). It is in this latter sense that the intelligible world is to be thought as a kingdom of ends.
- 11 See K. Düsing, 1971, 27ff.
- 12 These difficulties are signalled by the ambiguities characterizing Kant’s views concerning the general relation between morality and religion in the writings of the late eighties and early nineties. On the one hand, morality, since its supreme law that obligates and motivates us categorically, is purely formal, is fully independent of religion. “[O]n its own behalf morality in no way needs religion (whether objectively, as regards willing, or subjectively, as regards capability [*Können*]) but is rather self-sufficient by virtue of pure practical reason” (*Rel* 3/57). In any case one cannot be obligated to have faith in something: “a belief (*Glaube*) that is commanded is an absurdity (*Unding*)” (*CPrR* 144/255). On the other hand, “it is morally necessary to assume the existence of God” (*ibid* 125/241), and though good moral disposition may be accompanied by religious doubt and wavering, “it never can fall into unbelief” (*ibid* 146/257). Kant is particularly troubled by this latter problem, the question about the “virtuous atheist”—by the shadow of Spinoza. Characteristically, in the Third Critique where he directly invokes his name in this context (cf. 452–453/317–318), he at the beginning explicitly assumes his righteousness, to deny the very possibility of such a case at the end.
- 13 Carnois himself refers to a book by V. Delbos (1987) But the same idea (without elaboration) was already proposed by Beck (1960, p. 208). Allison in his book (1990, pp. 164 and 285) accepts Carnois’ interpretation.
- 14 A. W. Wood (1970, pp. 135–144) insightfully discusses Hegel’s critique and Kant’s potential answer to it. Concerning this antinomy see also G. Sala (1990, pp. 412–421).
- 15 Beyond this “abyss of mystery,” there remains also the question whether the whole train of thought leading up to this solution does not move in a badly-disguised circle. For our duty to promote the realisation of the highest good is “inseparably bound up with the moral law” (*CPrR* 114/231). It synthetically, but necessarily follows, in respect of our finite reason, from its objective validity already demonstrated in the *Analytic*. It is, however, our principle impotence to realize this final end through our free actions alone that grounds the subjective ne-

cessity of the introduction of the postulates. For, he now argues, the invalidity of this duty would render also the moral law invalid, “fantastic” and “false” (*ibid* 114/231). If so, then the postulates of the rational faith constitute the transcendental conditions of the objectively obligating character of the moral law itself, at least as far as we are concerned.. This not only contradicts everything that Kant in his critical period stated concerning the relation between morality and religion, it also directly undermines the very premise which legitimated the introduction of the idea of the highest good and the connected with it postulates.

- 16 On this see A. Reath, 1992.
- 17 See K. Düsing, 1971, pp. 17ff.
- 18 For it is only God who can resolve the contradiction involved in the very idea of *public laws of morality*, the contradiction between the purely inward and hidden from us character of the moral disposition and the full publicness of a system of laws regulating the organization of a society.
- 19 It needs, however, to be pointed out that when it comes to the characterization of the “marks” of the requisite organization of the universal church, though Kant underlines its fundamental difference from the constitution of the political state, he in fact, except the assumption of the “unchangeableness of its constitution,” actually list some basic principles of an enlightened liberalism (cf. *Rel* 101–102/135–136).
- 20 This is argued, I think convincingly, by P. Guyer (2000, 425 ff).
- 21 This point is raised by Beck (1980, 244ff).
- 22 A good example of such a train of thought is his discussion of the idea of providence in the long footnote to *PP* 361–362/331–332.
- 23 In the following I partly relied on V. Mathieu, 1989, chapt. IX and E. Förster, 2000, chapt. 5. For a radically different, “Anselmian” interpretation see R. Wimmer, 1990, part III.
- 24 In the *OP* Kant fundamentally revises his theory of empirical intuitions. Sensations are not purely passively received, they are the results of an encounter between our own moving forces as worldly organisms with the moving forces external to us.
- 25 It is characteristic that throughout this whole discussion it is—beside Lichtenberg—*Spinoza* whose name and thought is constantly invoked. Though at points Kant repeats his criticism of the “enthusiastic” elements of his philosophy (“to intuit everything in God”), he is now regarded as the “past,” the tradition of transcendental philosophy itself (cf. *ibid*, 21:87/251).

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Concepts of Neutrality and the State

ANDRÁS SAJÓ

János Kis spent many years of his life in a communist regime that arrogantly claimed that the state has not only the right to take stands in matters of personal conviction but it is indeed a civic duty to be partisan in a communist society. Understandably, he took a strong interest in the issue of state neutrality, with clear focus on the duty of neutrality that the liberal state should be charged with. This can be explained, perhaps, not only by his general interest in liberal theory, but also by his pronounced sensibility for hidden attempts at formalizing certain political arrangements that only superficially satisfy the conditions of neutrality. Such attempts were particularly characteristic of the transitional phase of emerging democracies. For János Kis, state neutrality is a non-foundational principle of liberal politics and a rule that has limited yet important applicability. Neutrality, in particular, does not rule out the possibility for the state to define values to be followed or identify markers of the common good. The neutrality rule, however, sets limits to these choices as they must not have the consequence of the state taking sides among different beliefs using means of authority and coercion. Neutrality, at its core, means that the state renounces its claim to determine what is and what is not just or true.

In this paper I will examine some state practices that claim legitimacy in the name of neutrality. These practices result from structural and procedural arrangements that tend to satisfy expectations of neutrality in a pragmatic way. These arrangements are numerous and quite different from one another and do not correspond to a single concept of neutrality. Further, the procedural and structural arrangements are often insufficient to satisfy actual expectations of neutrality and beg for substantive criteria of neutrality to be brought

into the political practice. The questions arise: Do these criteria satisfy a principled concept of neutrality? Why are these criteria avoided in state practices?

In *Section One*, I reconstruct the evolving meaning of the neutral state as it emerged during the course of history, including noninterference with religion, warfare and the economy. These traditional aspects relate to the position of the state (government) vis-à-vis other social structures and other states.

Section Two deals with autonomous social institutions which function the way they do as a result of “institutional neutralization.” The examples of science and higher education will be discussed here.

Section Three addresses the specific normative and organizational solutions used to neutralize the state. Here, neutralization is achieved through techniques that concern governmental structures and their way of operation. An examination of the rule of law is followed by an analysis of civil services and of “neutral powers,” including independent (expert) agencies (“organizational neutralization”).

Section Four looks at the conflict (or gap) between normative concepts of neutrality and the nature or quality of the neutrality as observed in actual institutional arrangements. Not only do attempts at neutralization fail to meet the expectations of normative theories, but they also fail to satisfy their own promises of neutrality, professional efficiency, and accountability. These shortcomings and contradictions negatively impact the capacity of the neutral state to generate or maintain trust. Notwithstanding the shortcomings, both the construction and fortification of formal neutrality and substantive neutrality do in fact contribute to the success of the liberal state.

1. State neutrality through non intervention

1.1. Religion

The idea of state neutrality developed primarily in the context of state-to-church relations. Separation of church and state and the acceptance of the neutral state reflected and institutionalized the failure of the state to build society around salvation. State neutrality in matters of religion reflects the experience of fratricidal wars of religion. In a denominationally heterogeneous society the minimum

of social peace and homogeneity quintessential for social order could only be achieved by neutralizing the government in matters of fundamental religious beliefs of the citizenry.

The desire for state neutrality traces back to the period of religious wars during the Reformation. As a first step towards neutrality, international treaties recognized that non-state religions (or at least some) would not be persecuted. The first such step was taken in the Netherlands: the Union of Utrecht Treaty (1579) granted freedom from the inquisition. Slowly the idea emerged that the state should exercise toleration with regard to religions given the nature of a state power that was increasingly seen as secular. Theologians and freethinkers argued that constraints in matters of faith could not bring salvation. John Locke offered the classic summary in his *Letter on Toleration* (1689).¹ Toleration results from the cognitive inability of the state to know truth and change people's beliefs.² This tolerance led to "non-interference." Locke does not take a position on state churches, but given his view on the purely spiritual function of religion, he seems to accept total separation.³ The neutrality of tolerance is a matter of state competence in the sense that religion does not concern state business. In principle, the state may still take sides with one religion, without prosecuting or sanctioning other denominations, e.g. the government may declare the major holidays of a particular religion to be national holidays. Such a state may still satisfy Locke's expectations of tolerance, though such an arrangement would not satisfy neutrality on the criteria of not taking sides.

Of course, the religious struggles that have led to tolerance cannot explain the *secularization* that later lead to the state's indifference to religion. (One could say that state neutrality is a special form of tolerance, namely tolerance in a "secular" state.) The distancing and isolation of the state from religion was made possible by secularized modernization.

Secularization, that is indifference in matters of faith, is the result of gradual changes in the general worldview of modern man (certainly not unrelated to religious pluralism). The economy and the world of science were the next to go through neutralization, although the government's relation to these spheres might correspond to different understandings or patterns of neutrality. The advancement of learning and the increasing reliance on science and pure reason were important elements in the process of neutralization, in which social

and political life lost their “theological guidance.” Carl Schmitt recognized with some resignation that so many spheres of our lives are being neutralized one after another.⁴ History is also a history of the neutralization of the spiritual.

It took a couple of centuries to accept in practice the idea that the state should be neutral in matters of religion in the sense of complete separation (mutual non-interference). Even today only a few countries, including the United States, follow this model. Even in the United States, it was the delicate balance of religions that led to the First Amendment, rather than a firm conviction about a neutral state being the best of all possible states.

Notwithstanding the surviving religious bias, neutrality was a major trait of the self-portrait of the nineteenth-century liberal state. In a few liberal constitutional systems, government neutrality is expressly institutionalized in the context of religion and churches, but state neutrality is not expressly recognized as a general constitutional principle. The non-establishment provision of the (United States) First Amendment and the provisions for the separation of church and state in many post-communist constitutions indicate the obligation of the government to abstain from matters of faith. According to an alternative formulation, government should not take sides among religions. Among the conditions of liberalism, neutrality applies to all beliefs.

The state maintains a certain distance from all religions, but just exactly how distant it is and whether the distance kept is equal from all is a matter of contingencies.⁵ In all practical forms of state neutrality the minimum benchmark is that the state refrains from siding with one or another religious truth. The model of neutrality offered here is that of the neutrality of the “outsider” who avoids substantive involvement, and who even refuses to become an arbiter or umpire.

In a secular world, creeds other than religious beliefs might take on an even more central role (such as ethnic identity). Neutrality thus became generalized and it was extended to personal beliefs. Old arguments regarding tolerance remain valid though in these contexts as well. The generalized expectation of neutrality in matters of personal belief and opinion resulted in the theoretical prohibition to persecute the person “who detests the nation.” (Harmful “consequences” of beliefs are a different matter.) Such neutrality follows

from the state's reluctance to subscribe to or promote a given moral mission. It is true that a fair number of liberal (and not so liberal) constitutions refer to moral goals (e.g., social justice). Such goals, however, are not to be interpreted as "moral mission." Of course, there can be an ad hoc state goal of moral charge as these are produced from time to time by the democratic process, but such a goal does not require specific moral crusades against specific beliefs as such to follow. It should be added that with regard to non-religious beliefs, the fear of a salvation-triggered civil war was less compelling. In such matters the neutrality requirement could be taken less seriously or was/is held irrelevant. While religion has historically been too divisive to run the risk of state involvement, other personal concerns and beliefs were not held to be sufficiently central to provoke mass social resistance. Moreover, state neutrality may contradict other legitimate state goals and functions, such as national homogenization along non-religious lines. Governments, particularly to the extent they serve (or become the tools of) political parties, may be inclined to convey ideological messages and beliefs. Neutrality may hamper such efforts. Of course, the closer attempts towards homogenization come to the idea of salvation, the more relevant neutrality concerns become.

The extension of neutrality to all matters political remains contested. After all, political actors are motivated to obtain political power in order to use power in a partisan and even biased way. One could say that neutrality of the state refers more to matters of personal belief and less to public power, but the borders are blurred. The neutralization of the political remains highly problematic. For Carl Schmitt, the state's neutrality in matters of worldview as developed from confessional neutrality, means embracing the enemy: "The nationalist inspired by national sentiment cannot be granted more protection than the enemy of the nation and that one who despises the nation."⁶ This cartoon neutrality drawn by Schmitt is pure falsification: In reality, the nationalist receives all the financial and moral support the government wishes to provide, especially in the case of a nationalist government. Strictly speaking, worldview neutrality is still limited to non-persecution. It suffices to state here that the extension of the model of neutrality that emerged from religious neutrality remains unfinished, if possible or commendable at all.

Skepticism within the moral sphere dictates that no public author-

ity can be allowed to dictate and determine the singular model of the good life. Indeed, as it was already clear to Locke, the state is incapacitated to determine them. Skeptical liberalism suggests that political organizations may follow the dictates of fairness, but the state cannot provide mandatory ideals. Once partisan positions and *Weltanschauung* tend to be imposed from above, the state that operates under the assumptions of liberal neutrality will advance techniques of neutralization, restricting partisan democracy. Such measures increase, in principle, its legitimacy and effectiveness (in the sense of reducing social conflict and also in terms of the mistakes of partisan bias).

Neutrality is neither self-explanatory nor self-evident.⁷ What is considered to be a neutral institution will not necessarily yield neutral results. What may seem neutral to some will be considered biased by others. The boundaries of neutrality are not predetermined; they are subject to external political and other (e.g., interest group) pressures and their boundaries can also shift over time. A rich example concerns state-church relations⁸. Consider the French concept of *laïcité*, which was sanctioned in the 1905 legislation that denied all government support to churches, especially in education. This concept was replaced following street demonstrations in the Fifth Republic without ever recognizing that one cannot call support and non-support equally *laïcité*. Or if both fit into *laïcité*, then the concept itself is too open and lacks substance. A final interpretation of the change is that the concept was reshaped in line with the times and political pressures that new policies try to contain and accommodate, rather than crush, as the Republicans once tried to do. The French example indicates that neutrality had to open itself up in order to accommodate equality concerns. This reshaping has meant that (equal treatment) pressures have penetrated and shaken up the concept to the extent of thrusting it into a pronounced state of confusion. What used to be *equal distancing* is understood today as *equal support without involvement*. Note that neutrality in the above sense, e.g. equal support to churches relative to their “size” or (much worse) historical-national importance, increases the bias in favor of the status quo. Such status quo bias will emerge in many contexts of neutrality.

1.2. Neutrality in international law

A second, widely respected meaning of state neutrality emerged in international relations, again, as a lesson seemingly having been learnt from armed conflict. This meaning refers to the relation between neutral powers and belligerents. After centuries of uncertainty, the Second Peace Conference at The Hague⁹ settled the matter for some time.

The most significant development here is in the underlying conceptual approach. Here again there is an element of non-involvement, but this scenario presupposes the existence of a struggle or conflict among *other* parties. Moreover, the international law concept of neutrality emphasizes the duties of the parties in the conflict *vis-à-vis* the neutral party. The Hague Conventions V and XIII list the rights and obligations of both belligerents¹⁰ and neutral powers in war on land and at sea. According to the Convention “[t]he territory of neutral Powers is inviolable.”¹¹

The neutral power is obliged to assure its neutrality. However, it is not called upon to punish acts in violation of its neutrality, unless the breach of the Convention occurs on its territory. The neutral power is allowed to resist attempts to violate its neutrality even by force; however, it must apply restrictions and prohibitions impartially to both (or all) belligerents.

The insulation of the neutral power is not complete, though most of the exceptions are of a pragmatic and practical nature. Chapter IV of the Convention prohibits the use of railway material coming from the territory of neutral powers, except when “absolutely necessary.” There is a strong emphasis on keeping the belligerent powers apart while they are on the territory of the neutral power. For example, “[w]hen war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.”

The Convention does not only list obligations of the belligerent powers, but also the responsibility of the neutral power to maintain its own neutrality. For example, the neutral power is forbidden to supply a belligerent power with warships, ammunition, or *materiel*. At the same time, the neutral power may use force to impose requir-

ements of neutrality on the belligerent power. In other words, state neutrality in war assumes a mutual but asymmetrical relation. When exercising its rights laid down in the Convention, the neutral power must be impartial, e.g., it must apply the same conditions to all belligerent powers. In this concept the other parties have explicit obligations *vis-à-vis* the neutral state.

The concept of neutrality that emerges from the Hague Convention differs markedly from the one of tolerance in religious matters. Here it is the neutral state that is primarily protected from intervention. Further, the neutral state has a positive obligation to repel violations of its neutrality. In conditions of war, the state's position is one of isolation among equals, while the neutral state that does not interfere in religious matters lies *above* the denominations.

1.3. Non-interference into the economy

In life spheres where the centrality of belief plays no role, government neutrality as a kind of "lack of competence" makes less sense. Governments claim to be installed to promote public welfare, therefore it looks odd, *prima facie*, to claim lack of competence or non-involvement in public welfare. Nevertheless, in the nineteenth century, government neutrality went beyond religion and encompassed the economy and other selected "neutralized" social spheres, such as science and the academia.¹² In these spheres, neutrality as non-interventionism is based on the "inherent" nature of government. *Laissez faire* economists argue in favor of state non-intervention on efficiency grounds. It is argued that involvement in these areas does not promote welfare. It is also said of the "nature" of the state that it is not capable of providing the flexible framework that is free enough for the interaction among businessmen (economic actors) or scholars, a condition believed to be quintessential for the advancement of the economy or higher learning. This view prevailed in the 1905 *Lochner* case, where the majority of the U.S. Supreme Court found unconstitutional a New York statute that limited working hours for women and children. The act violated the due process clause of the U.S. Constitution in the sense that it deprived these women of their liberty to contract. The regulation was, therefore, an unconstitutional use of the state's police power. The state was expected not to

get involved in economic regulation.¹³ Interestingly the dissenting opinion of Justice Holmes is also advocating neutral non-interventionism, although in an entirely different sense. In his view, neutrality means a kind of “empty” Constitution that does not take a stand for one economic or social policy or another, and expects the Court to remain inactive regarding legislative choices. The two approaches to neutrality in *Lochner* refer to different actors. The majority expects neutrality from the legislation, while Justice Holmes allows for more neutrality for the judicial branch of government, leaving it up to the state (legislation) to be or not be neutral, depending on the outcome of the democratic process. This position had become decisive in the long run: “If the people desire to give Congress the power to regulate industries within the state, and the relations of employers and employees in those industries, they are at liberty to declare their will in the appropriate manner, but it is not for the Court to amend the Constitution by judicial decision... [T]he judicial power may be invoked to the end that the constitutional limitation may be maintained” *Hughes, J. C. in Carter v. Carter Coal Co.*, 298 U.S. 238, 318–319 (1936).

Today *laissez faire* economists rarely claim that state intervention is immoral, although for nineteenth-century lawyers state inaction formed “part of nature.” Non-interference into the economy is not based on moral considerations respecting the autonomy of a given activity (except, to a limited extent, private liberties and the existing distribution of entitlements). Even after the state gave up its night watchman role, neutrality remained a major concern, both within and outside the economy. Wherever the state intervened, it tried to do so without undertaking a morally partisan agenda. It was expected to follow universalistic, or at least, nation-wide and consequentialist policies.

The welfare state first gained in popularity but due to inevitable overcommitment it ran into an increased performance deficit. Complex organizations like the modern state with its pluricentral commitments and its being subject to frequent rotational changes due to democratic politics have inherent difficulties in keeping commitments. The shrinking of the state is one possible reaction to the problem of trust-diminishing overcommitment. Today governments tend to withdraw not only from the spheres of production, but the state also tends to transfer its regulatory and

other remaining public service duties to non-governmental entities due to functional difficulties within the public administration. Commitment-making is delegated to institutions that are beyond the reach of ordinary politics (see the role of independent regulatory agencies, below). Alternatively, such a cutting of ties may take the form of privatization. In both cases the result is that the lack of trust in the government generated by partisanship (that prevails in certain societies and with which specific state agencies or actors are identified) will diminish. As a result, the potential insufficiencies of a privately provided service—that is in fact sponsored by the state—will not be attributed to the State.

The above trend, however, is not without contrary tendencies. The will to *herrschen* does not go away and the temptation to reach out for the spoils of democratic politics is well and alive. Economic or political (military) circumstances or electoral whim may require strong government participation in the economy: constitutions are, therefore, simply silent on the matter, or, as is the case with the German Basic Law, expressly authorize socialistic interventionism. Further, behind the veil of neutrality and the mantra of the “leveling of the playing field” (the standard justification of interventionism within the framework of neutrality) governmental intervention and regulation often remain biased (captured). Moreover, even in the age of government neutrality regarding the economy, a competing notion of parity based participation as neutrality has emerged.¹⁴ This means that the state must be partitioned according to some principle of parity among the political parties or interest groups. In this scheme, one or another prominent social group receives the privilege that it may regulate or control a part (or sphere of influence) of the state which is most important to this group, while also accepting through compromise that another interest group does the same with regard to another sphere which is important for that group. In Germany, all major churches that were granted a “privileged church” status receive their share; in Austria, both the “reds” and the “blacks” (social democrats and conservatives) received their fair share in civil service positions and in state-controlled enterprises. In Italy, the public television channels (RAI) were partitioned according to political orientation.¹⁵

2. Autonomous Social Institutions (Science, Higher Education)

While the status of the economy is determined as being largely separate from the state in a liberal market system and, consequently, the neutrality of the state is a matter of non-involvement and non-partisanship regarding an outside sphere, the differentiation is less straightforward or not as much a given or a fact of life in other spheres. In the world of knowledge production and in the communicative sphere governmental partisanship had been historically quite common and the emancipation of these spheres from the state has been a long process. According to some the process is to an extent still unfinished. The achievement of differentiation from the state was necessary for the same reasons of “efficiency” that dictate governmental non-involvement in the economy. Knowledge generation and distribution cannot take place under government-induced censorship and with too much political partisanship. This is the justification for creating institutional autonomy for science. To a lesser extent, this applies to higher education as well; higher education is to some extent piggybacking on the needs of science: to the extent institutions of higher education are considered producers of science they deserve the same autonomy (but see also the anti-autonomy argument with regard to training loyal servants of the state).

Neutrality of the state in the knowledge production and communicative spheres is put into practice by way of different arrangements, ranging from privatization (with neutral governmental regulatory powers retained) to relative autonomy within the state administrative structure. In this latter case institutional neutrality emerges as a combination of civil service professionalism, decentralization and de-etatization. De-etatization refers here to a process of designating a public space (institution) that is effectively shielded from the reach of direct political control, though not necessarily operating in the private domain.

Although scholars (scientists) had for centuries developed their own de-facto communities, these could largely be understood as being only a set of semi-formal but mostly private interactions that were not respected, sanctioned or sponsored by the authorities and had only limited impact on universities which had for long been functioning within the exclusive sphere of influence of the church. Influenced

by ideas rooted in the Enlightenment, Frederick the Great authorized freedom of teaching at the Prussian state-controlled universities. Kant (see *Die Streit der Fakultäten*) offered a theoretical justification emphasizing the importance of a free academic community for the advancement of learning. When Wilhelm von Humboldt was charged with determining the future profile of the University of Berlin in 1810 he emphasized that science followed its own rules and the “scientific institution lives without any external constraint or finality and renews itself.”¹⁶ Humboldt opted for an organizational design that enabled such a method of operation though he expected that the product of such an education would be primarily offered to be used for the nation’s advancement. Schleiermacher,¹⁷ one of the initiators of the setting up of the new Berlin university argued that independence is needed because the state and the people are themselves devoid of the principle scientific value and substance (namely, according to his understanding of science, of the ability to foster and produce a discovery).

While in Prussia the issue was independence from the state, in England autonomy had to be carved out from religion: “Before the concept of academic freedom could gain general acceptance, however, it was necessary that education become secularized. It was not until 1826 that the first nonsectarian university was established in London.”¹⁸ In France, only under Villemain as minister of public instruction (1839–44) was a law assuring academic freedom enacted.

Universities and science may serve society by achieving their own goals; this is possible only if the scientific community itself is the only judge. According to John Henry Newman, “[t]he university is the place to which a thousand schools make contributions; in which the intellect may safely range and speculate, sure to find its equal in some antagonist activity, and its judge in the tribunal of truth. It is a place where inquiry is pushed forward, and discoveries verified and perfected, and rashness rendered innocuous, and error exposed, by the collision of mind with mind, and knowledge with knowledge.”¹⁹ The self-referentialism, the isolation from the state as the source of academic freedom is expressed, among others in the Statement of Principles on Academic Freedom and Tenure (1940), still in force in the United States.²⁰

In the matter of higher education the United States moved towards privatization (separation) and in the case of state universities to

nearly total insulation from the state. To some extent the model of “neutrality of separation” is extended to academia. In a separationist regime neutrality of the state is preserved by banning state incursions into these spheres. Technically, it is the First Amendment that protects the academia against the state: governmental incursions are likely to restrict the free speech rights of the university and its members and are, therefore, unconstitutional.²¹

Separationism might be the characteristic feature of the ideal of American academia but this is not to say that the separation as it actually developed is similar to the case with churches. Public and private universities get considerable public funding with all sorts of strings attached that convey and indicate governmental preferences, including preferences of neutrality (as equality). Further, in the process of recognition and reaccreditation of institutions of higher education, even if this is to a great extent a matter of self-regulation, it is a condition of recognition that academic freedom be guaranteed.

Other systems prefer the option of *co-operation* to separation. Here, the neutrality of the communicative and knowledge-generating institutions is to be achieved by special guarantees that apply to the co-operation. Neutrality is understood here as an achievement of *insulation of a self-regulating professional community*. The state will be neutral because the institution’s neutrality is guaranteed even against the state, while in the separationist model the state is neutral as it is prohibited from interfering. In the co-operative (dependency) model the neutrality of the state results from (and reflects) that of the institutions. The co-operation between autonomous institutions of higher learning and the state runs the risk of state domination. Partly to counter this risk, the “neutrality as autonomy” of these spheres is often constitutionally guaranteed, sometimes by express constitutional provisions as is the case with the rather categorical Art. 5.3 of the German Basic Law.²² In many democracies, such constitutional guarantee is necessary due to considerable state penetration in terms of financing and makeup of personnel. In a number of countries teachers and researchers at public universities and research facilities are employed in a special category within the civil service, with the added charge of specific obligations of loyalty.

According to the German doctrine, which expresses the trend of formal constitutionalization the most clearly and authoritatively, the state is required to relate to science and the universities which inst-

institutionalize science in a value-neutral way. Such state behavior incorporates not only the guarantee of scientific (research) freedom but also the provision of the means that enable the work of science.²³ The state institutionalizes the protection of science through proper measures of organization and expenditure. In this process, the state is bound by constitutional principles: the organization must be structured in a way that ensures the right to self-management for science and the academic community. The neutrality obligation of the state includes prohibition of establishing committed universities (*Tendenzuniversität*), i.e., a university that would satisfy specific social interests programmatically. Likewise, Justice Frankfurter of the United States Supreme Court held that a “university ceases to be true to its own nature if it becomes the tool of Church or State.”²⁴

Neutralization (of governmental attempts at exerting influence) through the building of autonomous, professionally-motivated institutions and the delegation of decision-making to non-governmental bodies in which members do not financially depend on the state is valuable in most areas of cultural and knowledge production. It helps at least to the extent that the arrangement renders more difficult to government the shaping of the public debate. Of course, the insulation is far from complete. Academic freedom is undermined in matters of appointment and curriculum, and the state often tries to extend civil service obligations, like the loyalty oath. Further, university structures are often subject to external regulation and administrative review (e.g., Germany) and, above all, conditions of funding impose substantive requirements to be met. Research priorities, though often developed in cooperation with a community of scholars, are subject to politicians’ whims. Moreover, to the extent that autonomy is successfully guaranteed, the internal power structures might restrict genuine neutralization, notwithstanding normatively accepted intellectual freedom, freedom of debate and meritocracy. While governmental influences diminish, private censorship affecting public discourse may emerge. Unlike in the case of governmental regulation, free speech protection does not guard against restrictions inside private institutions, except if special rules apply.²⁵ The scholar who is dependent on the powers who rule the academia might be forced to conformism to the detriment of neutrality and personal integrity. Finally, although science and the scientific (or artistic) communities seem to have “natural boundaries” and the actors seem to be in the

position to determine these boundaries, the actual demarcation remains a matter of deliberate choice of those who control actual governmental and social power. For example, courts are the authorities that can draw the line between academic criticism of judicial decisions on one side and contempt of court on the other. This ambivalence is reflected in the ambiguous constitutional position regarding neutrality in liberal democracies. A full pre-commitment to independence and autonomy of universities and research is wanting.²⁶

3. *Neutrality from Within*

The above practices of neutralizing the state were based either on the separation of the state from certain other spheres of social activities, or on the creation of autonomous spheres where the neutrality of the state is achieved by institutional mechanisms which try to prevent the possibility of state penetration into these spheres. I also mentioned institutions which are designed to follow their own, expertise dictated, therefore allegedly non-partisan, i.e., neutral agenda. In this section I refer to attempts to turn the state into a neutral institution by designing *internal* arrangements, bodies within the state, that will make the state body itself neutral. Here again, neutrality has a somewhat different definition: it will refer to the *common good* of the general public. Such public common good is believed to be neutral in the sense that it favors all members of society without bias. A public body qualifies as being neutral if it either serves a broad enough goal of the public good or generates uniformly beneficial results within its context. Neutral state institutions and the state (to the extent it proves itself as a neutral set of institutions) satisfy a normative expectation of trustworthiness.

Such attempt at neutralization obviously contradicts the 'essence' of modern democratic politics, which is structured around the obtaining and use of power through democratic competition. In the Jacksonian tradition democracy is about spoils. The abuse of power and the maximization of spoils resulted in all democracies in a legitimacy crisis that was further aggravated by the inevitable inefficiencies in the state's performance. Once the trust in (and loyalty to) democratic institutions that offer participation had diminished (not to speak of all the practical and political difficulties of participation-

based trust building) it was nearly inevitable that a switch to the alternative of non-participatory legitimacy occurred.²⁷ To the extent that the state machinery is a vulnerable target of a power hungry political majority, neutralization is a reasonable alternative. Neutrality of the state (the containment of democratically determined politics, i.e., the sphere of spoils) became an alternative source of legitimacy of the state in times of democracy, promising the efficiency and impartiality of professionalism.

There are a number of loosely-related historical and pragmatic reasons for such neutralization. These include the need for social peace, the shortcomings of democracy, and the insufficient performance of an often overextended state. Neutral arrangements within the state are seen as guarantees of professionalism. Trust in professional expertise further increases performance based legitimacy. In the specific context of speech, David Cole finds that "...strictures of neutrality and independence apply in these contexts... because the internal functioning of each institution demands insulation from government content control. A spheres of neutrality approach would require that all public institutions...operate with a degree of independence from government control."²⁹

The internal neutralization of the state is carried out with different, unrelated techniques. In this overview I refer to the following techniques:

- the rule of law;
- civil service;
- neutral branches of power (*pouvoir neutre*) including independent regulatory agencies.

3.1. The Rule of Law

The rule of law as a fundamental component of the constitutional state has strong elements of neutrality, contributing to the depoliticization of the state. In a rule of law regime, to the extent state actions exist in the form of legal decisions the authorities will follow pre-established rules; such rule obedience is seen as being neutral. The state and its organs, the administration of justice, and public administration are deemed neutral so long as they do not deviate from the norms. Here "pre-committed" means neutral: the norm is

the source of pre-commitment, and it is understood to be neutral from the perspective of the one who applies it. This formal approach results in the myth of a neutral state bound by law. Very often, in pure theories of law the objection of "content bias of the laws" is disregarded and only procedural fairness and equality of the parties in the legal process is considered.

The rule of law, to the extent judicial review is one of its central elements, brings in an additional component of neutrality, namely that of impartiality. The model of judicial impartiality is the basis of some expectations of neutrality. Indeed, the prevailing thin concept of thin (organizational, structural, etc.) neutrality centers on this ideal, assuming that once the structural preconditions of impartiality are satisfied neutrality will follow. However, most instances of neutrality emerge in situations that differ from that of the judge. The judge stands above the parties, and in principle, has no stake in the decision he renders. In this model of neutrality the judge is not involved in the dispute or conflict, in a way standing *above* the parties in conflict. He only interjects his authority into the conflict.

The expectation of judicial impartiality was further reinforced once *equality before the law* was recognized. The idea(l) behind *equality before the law* was further extended to other spheres of state activity. The state today is expected to treat all its citizens equally, at least with regard to certain standards, and it is specifically expected not to be biased on grounds of worldview and belief. Impartiality and the equal treatment promised by the rule of law remain in many regards purely empty promises of form with little substance, and unfortunately the standard of equality as well as the substantive justice rendered under the guidance of the norm of impartial administration of justice might also be easily based on partisan considerations. For example, the state (and its law) will not be perceived as being neutral if it favors either landlords (or tenants for that matter), though the courts applying the partisan law might well be quite impartial. Contrary to impartiality, state neutrality presupposes a hands-off attitude (or the keeping of a safe distance) that would, in principle, allow non-state actors to follow their independent agenda.

3.2 The neutralization of the civil service

The idea that the state as an organization serves the public good was an accepted truism in enlightened absolutism in the second half of the eighteenth century. Key to the real-world implementation of this concept of the neutralized state as an administrative body is the creation of a class of career civil servant professionals. The civil service sector contributes to neutralization in two ways. First, when promoting the goals of the state via its actions, the civil service based administration is believed to be unbiased and impartial, subject only to rules that apply to all. Second, to the extent that a body of professional civil servants is capable not only of administering but also of initiating and thus setting the social agenda in a given community, the civil service sector is in effect reversing the direction of the flow of policy, as it is believed that in a receptive environment the state is likely to subscribe to professional goals and considerations in this way affirming the value of their knowledge of their respective fields. Here, professional expertise (as long as representing widely accepted views within the respective community of experts) is seen as neutral as opposed to special interest agendas, which are viewed as politically skewed and therefore biased.

Here, neutrality refers to the personnel composition of the state, which is made up of people who act as if they were neutral, that is *sine ira et studio*. Civil servants are perceived and presented as unbiased, because of the neutral (non-political, professional, strictly public goal/public good-oriented) criteria of their appointment, career advancement and professional choices. It is assumed that if appointment related and other decision making processes are consistently free of influence of partisan politics, then the civil service and the public administration composed of civil servants will gravitate over time to a more neutral status. To some extent the emergence of the big administrative state had to be allayed “by depicting administrative agencies as arenas for the deployment of neutral expertise.”³⁰

The civil servant appears to be free from the expectation of personal subordination and loyalty to politicians, and is above partisan obligations. The state, to the extent that it is a sum of the activities of the civil service, may claim to be neutral. Organizational and legal guarantees lend credibility to this claim: such guarantees were elaborately provided in the Weimar Constitution, and yet the Weimar

civil service remained, to a great extent, loyal to the Emperor and his substitute (Hindenburg). Where traditions and conditions are not favorable civil servants will follow the letter of the law and yet remain politically biased (organizational and personal interests aside).

The internal life of the modern government has been neutralized in most respects for pragmatic, not moral reasons. Public bodies and administrative organizations enjoy the insulating effects of their legal privileges, allowing the civil servant to ground her decision on professional and expert consideration. Professionalism and impartiality offer neutrality. Further, to the extent decisions are based on technological or scientific considerations, they will have all the neutrality of science and technology. (It is not by accident that in the New Deal the representatives of scientific management in public administration opposed law-based restrictions which were openly held to be biased.)

3.3 'Pouvoir neutre'

The idea of a state with neutrality guaranteed through its laws emerged at about the same time as the concept of *organizational* neutrality *within* the state. The idea that certain political bodies might be neutral within the partisan branches plays an important role in the writings of Benjamin Constant. Constant developed a concept of *pouvoir neutre*, in which the neutral power, as pertaining to a king (head of state), emerges in a constitutional monarchy to solve conflicts among the branches of power and social groups.³¹ The ministers (the executive) are an active power with responsibility, while the king is inviolable and his neutral power is non-political. The opposite of *neutral* is the *active* (political). The neutral power cannot defeat or neutralize the active powers; its role is to preserve them. (Compare this with the concept of the French President as arbiter in the Constitution of the Fifth Republic.) The neutral power, above the "common condition," remains uninvolved in the common agitation; it is impartial.³²

Interestingly, Constant's idea proclaiming that among the committed organs of the state there *can* be room for a body that is neutral clearly conflicts with Madison's more dynamic concept of constitutional separation of powers. Madison did not see a realistic

possibility of such an angelic lack-of-interest or non-involvement in the midst of an otherwise politically charged sphere. In a way, at the heart of Madison's dream of constitutionalism lies a vision of partisan politics energized by the unprincipled logrolling of interest groups.³³ In his concept, governmental neutrality was to emerge, interestingly, as a reaction to (and thus practically precipitated by) the factionalism that is transferred through the branches of power. In his approach the factional units and the jealousy of the separated branches of government push the state machinery into some kind of non-partisan equilibrium.

It occurred in the United States that in the second half of the twentieth century a new institutional arrangement was developed to satisfy the needs outlined by Constant. In the aftermath of WWII (and later during the Vietnam War with the wave of related civil unrest around 1968), amidst growing dissatisfaction with the public authorities, the need for a new anti-authoritarian neutralization emerged. Public sentiment required that even in law one should "respect people's freedom to choose their own values."³⁴ Philip K. Howard summarized the corresponding judicial trend that seems to have been prevailing since the 1970s: "Justice is neutral, or it is not justice."³⁵ In American legal thought, it is perhaps Herbert Wechsler's attempt that has become the most influential in expecting neutrality from the Supreme Court.³⁶ Beginning in the 1950s, the American legal community expected that the Court's decisions related to constitutional law be accompanied by opinions justifying their findings on "neutral principles," and on "grounds of adequate neutrality and generality" that transcend the scope of the case-specific result reached at that particular instance. Wechslerian constitutional theory prevents political judgments from "turn[ing] on immediate result"³⁷ by finding ways to infuse politics with constitutional principles. Here, an allegedly neutral power—the constitutionally committed judiciary—intervenes in the struggles of the political branches. The judiciary is placed above ordinary politics, at least in the application (defense) of the Constitution. Neutrality becomes the supreme virtue of the Supreme Court, with its legitimacy deriving from its neutrality. It is legitimate because it is neutral. Judicial neutrality is attractive because it seems to provide at least a minimal moral foundation that is satisfied if "the rule serves no particular interest, expresses no particular culture, and regulates everyone's behavior in a universally

advantageous or clearly correct way. The rule carries no personal or social signature.”³⁸ The Supreme Court of the United States is inclined to recognize neutrality as a fundamental legal value: “One century ago, the first Justice Harlan admonished this Court that the Constitution ‘neither knows nor tolerates classes among citizens.’ *Plessy v. Ferguson*³⁹ (dissenting opinion). Unheeded then, those words are now understood to state a commitment to the law’s neutrality where the rights of persons are at stake” (*Romer v. Evans*⁴⁰). At least in matters of fundamental personal rights the law itself should be neutral, and institutions (especially courts) enforcing such substantively neutral rule of the law have to be and will be neutral too.

Constitutional courts in and outside of Europe are increasingly depicted in both the legal and the public imagery as non-partisan entities bound only by the constitution, whose main task is to solve partisan conflicts impartially. An assessment of their political composition, willingness for activism and its directional tendencies, and overall performance of these courts (or their equivalent supreme courts) reveals that neutrality is (deliberately) confused here with juridicization. It was not by accident that Kelsen argued in favor of constitutional courts only so long as they remained negative legislators.

Constitutional courts and supreme courts do not refrain from dictating legislation. Nevertheless, these courts contribute significantly to the appearance of neutrality. When a parliamentary political conflict is brought in front of the constitutional court, it will be discussed and handled in depoliticized terms of legal doctrine. Constitutional courts, even if they take sides or have underlying political agendas they actively pursue, operate according to precedents and legal arguments, certainly a logic alien to the idea of *herrschen*.

The last fifty years have seen the mushrooming of independent agencies that are also considered to pertain to the *pouvoir neutre*. These include central banks, national audit offices, independent regulatory agencies, like competition offices (antitrust agencies), and broadcasting and telecommunications regulators.⁴¹ These bodies are designed to be non-responsive to party politics, and by insulating these institutions from other, more political parts of the state it is hoped that these institutions will take into account only professional considerations. Such depoliticization is hoped to contribute to the neutralization of the regulated spheres. A politics free central bank is

expected to guarantee autonomy of the economy, while a broadcasting regulatory agency is expected to shelter the media from political interventions, etc.

The creation of independent agencies reflects the insufficient neutralization achieved via the civil service. After all, civil servants were bound by the politically biased rules. Moreover, as long as politically motivated regulation and civil service intervention apply to the neutralized spheres of communication,⁴² knowledge production, and distribution of public information, there will be need for institutional protection that neutralizes such potential for political interference. Such additional safeguards are needed because these entities perform signaling activities that might be distorted and destroyed as a result of the interference of governmental and other political interests. The level of protection or special treatment may vary from country to country. From time to time desperate efforts can be seen being mounted to construct these institutions in such a way that renders them non-partisan and increases their neutrality both in terms of impartiality and independence from the government. The more a self-regulating public body in a given neutral public sphere is shielded from partisanship, the more its decisions will appear neutral and the less will they be seen as susceptible to political challenge. Decisions of independent, self-regulating public bodies that affect communication (including resource allocations) are no longer considered governmental in the sense of the partisan-political.

The transfer of decision-making to neutral public institutions remains problematic. Policy-making institutions that are insulated from the democratic process are not necessarily fully neutralized in the sense of being exempt from political influence, but, at least, they might be insulated *vis-à-vis* the democratic process. Of course, such insulation may also allow elected officials, government bureaucracies, and interest groups to exercise even *more* political influence than in a transparent democratic setting. Neutralization has very often been turned into a contorted way to actually protect particular insider groups by comfortably isolating them via the exclusion of contrary political influences. The design of insulated public institutions is, after all, left overwhelmingly to legislation that often follows logic completely alien to institutional neutrality. The withdrawal of the state from certain public domains is often precipitated by major performance failures of government agencies accompanied by

successful resistance to government by the regulated. Quite often politicians seek ways to avoid having to claim responsibility for such failure, and the independent status (or label) of a given agency does indeed allow a politician enough distance to avoid a real calling to account. Note that most of the independent state agencies that were created to enhance credibility in fact serve special interest groups and only indirectly the general public: it is the trust of these special interests that is at stake. (Central banks serve the financial community directly, the media regulatory agency is catering to broadcasters etc.).

4. Troubles with Neutrality

Notwithstanding the considerable empirical differences as to what constitutes state neutrality, it is widely held in liberal political theory that the liberal state can avoid having to choose among competing concepts of the good life, and this is a valuable asset that increases the legitimacy of the state. Here, I would argue that this goal of neutrality cannot be achieved, as the prevailing political practice in liberal democracies would suggest, without some substantive, outcome-oriented analysis of neutrality, as suggested, among others, by János Kis. The institutional designs of liberal democracy, however, do not offer much opportunity for such substantive review. From a sociological perspective this is to be explained by the status quo favoring tendencies of neutralization. The imperfect nature of neutralization, i.e., the permanent danger that insulation of particular spheres of life from democratic or otherwise public control leads only to the fostering of just another kind of partisanship, censorship or other form of oppression within the neutralized sphere or institution raises doubts regarding the real-world benefit of the promotion of state neutrality. Even if one disregards the Leninist position that considers state neutrality a bourgeois sham, a critical approach seems justified.

4.1. Normative and Empirical Concepts of Neutrality

Neutrality is a highly problematic and somewhat vague concept. After all, government neutrality may be satisfied sometimes by impartiality; it may also imply non-interference (*laissez faire*); sometimes it requires equality of chance (e.g., among parties in elections). Some models of neutrality are based, however, on non-interference—a very special form of impartiality, indeed. In other instances, the state is not above the strife, though the state's interest, it is believed, is best served by following professional, unbiased rules (see central banks).

Notwithstanding the diversity of concepts and practices that are in play in the arena of state neutrality, there seems to be some agreement on the minimum content of what will satisfy the meaning of state neutrality in liberal democracies. As Guy Haarscher summarizes it,

the word “neutrality” must be understood at least in the following contexts. First, it means that the State is not part of the ongoing debate in pluralist societies between different conceptions of the good life. Secondly, it is related to the idea of a State that does not make distinctions between citizens according to their so-called ‘racial’ belonging (the US idea of a ‘color-blind Constitution’). Thirdly, it implies that the State must not be biased in favor of an ethnic group (often the majority group, using a dominant, sometimes official, language). And fourthly, it means that the State is not the instrument of special interests, a dominant class, etc.⁴³

One could argue that these expectations are satisfied and the state is legitimized if structural, institutional, organizational, or legal-procedural attempts at neutrality are in place. However, the perception of neutrality cannot be based solely on guarantees of independence, integrity, and procedural fairness. Empirically, as it was demonstrated above, these arrangements remain imperfect and do remain targets of influence for all the bias the concept of neutrality intends to circumvent. The neutrality of non-interference and non-commitment is not sufficient to achieve state neutrality: the state can hardly avoid supporting (at least to some extent) one or another competing conception, and the formal-institutional solutions are insufficient partly because the techniques of neutralization can fail,

and partly because the neutralization can allow for new, disguised, and uncontrolled commitment-making on the part of presumably neutral institutions to emerge.

Also, one cannot avoid evaluating the *outcome* of the action of a neutralized entity. The decision itself, and not only the procedure leading to it, should satisfy certain criteria if “[w]e want the state to be neutral between competing viewpoints, or competing conceptions of the good life.”⁴⁴ The thick concept of neutrality assumes that decisions and perhaps the consequences of decisions shall satisfy expectations of neutrality; neutrality is substantive in the sense that it is the “result” that should satisfy “neutral” criteria.

The ideal of state neutrality may be approached more closely if additional expectations of neutrality are satisfied. “Neutrality depends on the categories applied”; categories that allow government bias and partisanship to prevail will not satisfy expectations of neutrality. The first choice (the first order problem) is a categorical one. The government’s position must be categorical in order to remain neutral, although categorization by itself is an insufficient condition of neutrality. According to János Kis,⁴⁵ categorization satisfies the requirements of the neutral state as long as the categories do not discriminate among people, denying their way-of-life choices and, therefore, their equal dignity. Further, in order to remain neutral, decisions within the category should take into account the intrinsic values held by the recipients. This points to meritocracy. Finally, the meritocratic criteria shall be “substantially related” to the category. Of course, probing at just exactly how neutral various distributive criteria are can show differences. The quality of neutrality of a system, for example the neutrality of a state subsidy allocation can be varied. Consider the differences in the public funding of a denominational school. The funding might be awarded based on either the *actual number* of parents choosing the denominational school, or money may be transferred to all denominational schools on the basis of religious origins of all the children in the total population, irrespective of the actual choices. The subsidy might be allocated on the basis of the “historical importance” of, or values attributed to, a church that operates the denominational schools. The first criterion is neutral in the sense that it relates primarily to the goal of support (for education) and not to one’s worldview (though the educational choice of the parent is directed by his or her worldview.) The “stat-

istical" distribution disregards the goal of categorization and the third one has nothing to do with the actual neutral category.

In the majority of cases the substantive analysis is replaced by fair procedures. Why is the *formal-institutional* insulation preferred in institutional design and even among many political scientists to substantive criteria of categorization? It is the success of the "great trick" of institutional neutralization that makes most substantive departures from neutral categories invisible. Once the criteria of state neutrality are determined in a formal and structural sense, that is to say that insulation providing neutrality has been established, or autonomy etc., are provided, then it is hard to claim lack of neutrality in the public discourse. The institutional arrangement creates the impression that the institutional decision itself satisfies fairness, being predetermined by expertise and scientific wisdom. To challenge these visible features on the basis of substantive analysis is quite costly, and the substantive analysis, given the uncertainties regarding neutral criterion, is itself uncertain and is therefore unconvincing. Except for obvious bias indicated by the violation conflict of interest rules, it is difficult to challenge an appointment in civil service or a library acquisition on meritocratic or other value-related (even professional) grounds. It is not by accident that instead of such claims lawyers prefer to contest such decisions on grounds of procedural irregularities. The institutional guarantees of neutrality (the way in which the decision-maker is sheltered from external influence) replaces costly substantive analysis. In the review of substantive decisions courts are generally satisfied with the analysis of those structural organizational criteria that enable the formulation of the decision. In Germany, for example, the Federal Constitutional Court emphasizes the importance of institutional-organizational guarantees of neutrality and autonomy, thereby avoiding substantive review of specific decisions (see e.g., *Mützenbacher*). Generally, justices will not review the neutrality of the actual criteria used in making a contested decision within a formally neutralized sphere, for example, whether a meritocratic criteria was or was not biased. The "neutral" composition of the decision-making body is deemed to be a sufficient guarantee. A library commission composed of parents is assumed to be the best protector of children's educational needs, as long as the criteria applied by the parents strictly refer only to the moral and cognitive development of the children, and do not encroach upon the

author's political views or morality. Review of a university disciplinary procedure that concerns academic merit (e.g., denial of tenure, etc.) is limited to the analysis of just two factors: the board's composition, and that of the fairness of the procedure itself as set forth by established rules regulating the rights and responsibilities of various parties involved. Such conditions of procedural correctness, if they are found to have prevailed, in and of themselves certify the fairness of the decision itself.

4.2. Limits to neutralization

Here, I would like to address some of the criticism that might be voiced regarding the overall possibility for and intrinsic values of state neutrality.

The concerns are that:

1. Neutrality has negative effects or consequences
 - a. in terms of the effects that result from the state's passivity that originates in certain concepts of neutrality;
 - b. because it excludes the political element from public life, including values of democracy.
2. Neutrality is not "real" in the sense that
 - a. it only helps to disguise domination; and
 - b. the status quo favoring nature of formal neutrality allows for non-neutral outcomes instead of countering them.
3. Neutrality of the state is not possible
 - a. either in light of the empirical data, or
 - b. in view of the actual functions a state has in a divided society.

4.2.1 SOLUTIONS DICTATED BY NEUTRALITY MIGHT BE MISPLACED

1.a. Traditional international law-based state neutrality as "guaranteed non-interference" has at various times resulted in indifference to genocide.⁴⁶ The problem of intervention has become one of the great puzzles of contemporary international relations. The under-

standing of neutrality based on the Hague Convention may delegitimize the institution. Consider the model of belligerent neutrality—a highly controversial and fuzzy concept in its own right.⁴⁸ The 1907 Hague Convention required that the neutral party remain disengaged from the armed conflicts of others. At the same time, the neutral party could maintain certain relations, as long as these relations applied to “all” belligerent parties. But a geopolitical *status quo* can easily turn this theoretical equation of “equal distance–equal relations” into unequal relations on the ground. If all Swedish iron was contractually committed to Germany during WWII, it made little difference that Sweden, in principle, was open to deliveries to Britain (a technically unlikely occurrence).⁵⁰

1.b. Not only can neutrality contribute to the existing system of social domination, it may also directly undermine the credibility of the institution that relies on it as it preempts the checks-and-balances of democratic accountability and responsibility.

4.2.2. NEUTRALIZATION SERVES DOMINATION

2.a. We have seen that many instances of neutralization, especially those that leave decisions and action to “experts” in autonomous spheres and institutions (be they priests or other religious leaders in the church autonomy, scholars in scientific interaction, instructors enjoying academic freedom, expert regulators in independent agencies, etc.) result in the exclusion of “outsiders,” primarily but not exclusively politicians. Such exclusion uses formal rules as well as rules of competence. Rules of competence make the voice of non-experts irrelevant. These arrangements are neither democratic, nor subject to sufficient democratic (elected/political) control. The neutralized spheres are presented (and hence legitimized) as areas outside power politics: these spheres of neutralization are presented as spheres where there is no *herrschen*, no politics. Consider this at the level of language: politics is replaced with policies, government with governance. In principle, decisions of neutralized public institutions are not governed by partisan politics even where the political branch funding the institution and appointing its members has clear partisan preferences. The discourse and the decisions of neutral institutions follow purely professional canons. Internal power alliances will

be used to silence dissent. Within the world of science such silencing strategies often excommunicate and effectively isolate whole groups of scholars and their ideas, who, as a result, are then constrained to operating on the fringes of science under a new paradigm. Such exclusion often leads to quite a costly loss in the advancement of knowledge. Similar phenomena occur in independent regulatory agencies, where one or another set of professional assumptions will succeed in shaping the expert discourse. This will limit choices (see policies of central banks) and exclude alternatives. To the extent political decisions are turned into expert decisions of neutral institutions the political dimension of the decision fades away. Economic policy debates become expert discourses that are highly reified, and which do not allow the input of those who are affected. This is a deliberate result of the design: the negotiations of an international debt relief program are intended to exclude politicians who are (rightly) perceived as part of the problem, as people who would hijack the structural reforms in order to benefit their interests. But at the same time the exclusion of the political player means that those who are most widely affected by the decisions have no place of input in the process. Their considerations and interests are disregarded due to professional neutralization, while the beneficiaries of such mandated structural adjustment programs do have access and input. Yet to the world the whole expert debate is presented as being neutral, without specific beneficiaries.⁵² The neutralization helps to disguise the domination reinforced or resulting from the neutral process. In this regard Carl Schmitt was perhaps right: neutralization of the state is simply the transfer of the crucial sphere of politics from one playing field to another: politics always retains its central position, though not in the Schmittian sense of being a relation among friends and enemies. The neutralization or de-politicization of government is a matter of degree and blend.

While state neutrality employs the strategy of exclusion with the intention of countering discredited party politics and democratic control, at the same time it promises a certain equal treatment for all citizens. In this reading, neutrality creates a sense of inclusion: after all, all are treated the same way, as dictated by professional knowledge; that is to say even if they are treated differently they remain part of the same (imaginary) community. The equal distance of the neutral state makes the state legitimate in the eyes of all citi-

zens and groups that do not feel discriminated against. For example, if a given service is denied, that is seen as the consequence of professional considerations as long as it satisfies the criteria of (or appearances of) meritocratic justice; hence the loyalty of the dominated towards the (neutral) state. The professional neutrality that is produced by neutral institutions (e.g., independent agencies) is “neutrality” that might serve non-partisan social domination by reinforcing the status quo behind the veil of professionalism. This is achieved, for example, by the public service model of broadcasting (funded by tax revenue) that creates the illusion of a unified nation, national culture, and mass community. “Through these discourses and structures, subordinate classes are integrated into a political and cultural consensus forged in the long-term interests of the ruling classes of particular countries.”⁵⁴

2.b. Admitting that political structures that emerge in the name of neutrality may satisfy certain criteria of one or another sort of state neutrality, there remain certain doubts regarding the actual political performance of the politics of neutrality. In particular, are neutral political arrangements improving the overall neutrality of the political system in the sense of contributing to a just or fair ordering? The question comes up in light of a fundamental objection to traditional liberal neutrality. Traditional liberal neutrality expected neutrality from the state in matters of common (public) good. It is argued that such expectation regarding the state is perhaps justified where the principal danger to fairness comes from the state siding with one or another concept of the common good. This is certainly the case where the state with its coercive power has no rival in society. However, in situations where the major danger to fairness is coming from non-state actors, it is not evident that the state should remain neutral (non-involved) in the sense of being idle. After all, what happens if the state continues to abstain from intervention in situations where private actors relying on their overwhelming might (including coercive powers) tend to impose their biased beliefs on the less powerful? Such neutrality might result in giving a green light to other principal economic and social arrangements that are decisive to the ‘basic structure’ of society.⁵⁶ Is it the duty of the neutral state to counter private bias where non-state actors force their version of the public good on others? Further, a similar problem emerges in modern international relations: is non-intervention in the case of viola-

tion of domestic neutrality in another state (excessive intolerance) morally acceptable for a liberal international world order? Is the international moral order based on toleration of the violation of neutrality in other states? Isn't it the case that non-intervention in humanitarian crisis or even in the case of oppressive dictatorship goes against a deeper requirement of neutrality that would require at least that fairness be made available everywhere?

4.2.3. NEUTRALITY IS IMPOSSIBLE

3.a. Carl Schmitt makes a particularly challenging comment regarding internal contradictions of liberal neutrality.⁵⁸ He criticizes the prevailing neutral attitude of constitutional lawyers in the Weimar Republic who accepted all majority decisions regarding the amendment of the Constitution. In his view, these lawyers, on the basis that they accepted that the neutrality requirement of the constitutional amendment procedure was met, consented to any procedurally legitimate amendment, irrespective of the contents of the amendment: with sufficient majority, as Schmitt states it, it would be acceptable to change the Weimar system into either a national socialist or a Soviet republic. In this neutral approach, however,

“all forms of preference to the given form of state or the governing parties of the day—be it in the form of subsidies to propaganda, through discrimination in the use of radio stations, official gazettes, through film censorship; by the restriction of party political activities and the violation of the party affiliation of civil servants in the sense that the governing party permits the civil service membership only in the government party of the day or in parties not too distant; by banning assemblies of extremist parties; with the distinction between legal and revolutionary parties on the basis of their programs—mean outright and outrageous opposition to the constitution in the sense of a consistent rethinking of art. 76 [of the Weimar constitution].”⁶⁰

In other words, neutrality of the state is an oxymoron: such neutrality would imply that the democratic and neutral state should accept its own demise and destruction. The existence of various meas-

ures that safeguard the liberal status quo (including the above quoted measures of militant democracy) indicate the impossibility of state neutrality. The withering away of some of the harsher elements of militant democracy, e.g., the decline of partisanship in the allocation of civil service jobs over the past fifty years⁶² does not refute the criticism. State neutrality—as it is understood today—contains certain assumptions about its limits: it is not neutral (in the sense of tolerance) regarding its own existence. The impotence of neutrality that was attributed to the liberal position that accepted all formally correct amendments to the constitution is replaced with a doctrine of unamendable structures and values of the constitution.

3.b. A second objection to the possibility of state neutrality originates from the need of identity and homogeneity within the state. Where there are no shared values, as is the case in increasingly heterogeneous modern democracies, there is an increased need for values and cultural symbols that integrate local societies or the nation state. With the thinning of the nation-state in pluralist secular societies, traditional values cannot successfully mobilize the general public. In order to maintain a level of cohesion the state might be forced to take positions in matters of identity. If the state declares in our collective name “who we are,” this may violate the expectation of neutrality by way of not taking sides between competing conceptions of the good life.⁶⁴ The neutrality of the state in the above categorical sense helps to avoid the imposition of identities by taking sides (e.g., for or against the poor, the childless wealthy, etc.).

The neutrality model of the state competes with other political designs, such as that of the nationalist partisan state. Moreover the faith-protecting mission of the state might remain prevalent not only in denominational-fundamentalist states but in otherwise functioning democracies. Even non-neutral, committed or parity-oriented normative concepts might prevail in the liberal state. Consider, for example, art funding—not to speak of education, etc. In these instances the consequentialist supremacy of state neutrality is obvious and neutrality-based criticism will be well placed and hard to resist—as the writings of János Kis prove it.

Notes

- 1 Locke excluded papists and atheists from those whose worldview should be tolerated. The reasons for such exclusion are acceptable even today, though Locke erred with regard to the factual basis of his conclusion. Following the prejudice of his times, he considered these groups to be dangerous to the state or to people of different beliefs.
- 2 "[T]he care of the salvation of men's souls cannot belong to the magistrate; because, though the rigour of laws and the force of penalties were capable to convince and change men's minds, yet would not that help at all to the salvation of their souls." John Locke, *A Letter Concerning Toleration: In focus*, John Horton and Susan Mendus (eds.) (London: Routledge, 1991), p. 19.
- 3 "[T]he church itself is a thing absolutely separate and distinct from the commonwealth." *Ibid.*, p. 13.
- 4 The reconstruction of Schmitt's theory is based on Carl Schmitt, "Das Zeitalter der Neutralisierungen und Entpolitisierungen," in: Carl Schmitt, *Der Begriff des Politischen* (Berlin: Duncker-Humboldt, 1996 [1934]), pp. 79–96.
- 5 Krystyna Daniel and Cole Durham, Jr., "Religious Identity as a Component of National Identity: Implications for Emerging Church-State Relations in the Former Socialist Bloc," in András Sajó and Shlomo Avineri (eds.), *The Law of Religious Identity: Models for Post-Communism* (The Hague: Kluwer Law International, 1999), pp. 117–152.
- 6 Carl Schmitt, *op. cit.*
- 7 "[N]eutrality itself is far from a straightforward concept. Certainly the recent debate has shown that it is not particularly amenable to uncontroversial logical analysis." Jeremy Waldron, *Liberal Rights: collected papers 1981-1991* (Cambridge: Cambridge University Press, 1993), p. 145.
- 8 The differences are spectacular even if seen synchronically: one should only look again at the various understandings of church-state relations in advanced democracies.
- 9 Signed—18 October 1907; entry into force—26 January 1910. It is questionable how the specific neutrality definitions of the Peace Conference remain relevant today, given the subsequent changes in techniques and methods of warfare that could not be considered in 1907. The Conventions proved to be hardly applicable in aerial warfare as soon after their coming into effect as in the First World War.
- 10 It would require a separate study to discuss the obligations (if such obligations indeed exist) of those parties towards whom the state or its entities are neutral. Consider for example the situation of churches. Are they required to reciprocate state neutrality? Or is it acceptable that churches make claims on the state, including the political process (professing political preferences on how to vote in a given election)?
- 11 Section I lists acts that are to be regarded as a violation of the neutral power's territory, like the erection of wireless telegraphy and similar apparati for communication purposes, the formation of corps of combatants or the movement of troops.

- 12 See Kant, "Die Streit der Fakultäten," [The Contest of Faculties], in Kant, *Political Writings*. Hans Reiss (ed.) 2nd ed. (Cambridge: Cambridge University Press 1991 [1798]). It is quite interesting that academic freedom in Kant is justified pragmatically with the needs of the "lower" sciences (philosophy and natural sciences) to interact freely.
- 13 See Cass R. Sunstein, "Lochner's Legacy," *Colum. L. Rev.*, 87, 1987 p. 873.
- 14 At least Carl Schmitt discusses these arrangements as forms of neutralization. He refers to an example of Max Weber's regarding public university appointment processes, where a biased "impartiality" (balanced partiality) means that representatives of competing scientific positions (schools of thought) should receive equal treatment by way of aggregate parity (over time). Vacancies in (tenured) faculty positions are to be filled based on an alternating pattern that once favors candidates who are associated with one particular scientific position, which is then followed by appointing the proponent of the other.
- 15 For Carl Schmitt, this approach meant that the state would become compartmentalized and unable to respond with a single voice to the enemy. Compartmentalization and the state's withdrawal in favor of neocorporate arrangements may, however, be a way to preserve social peace and under specific circumstances may increase the efficiency of the state.
- 16 Wilhelm von Humboldt, *Über die innere and äußere Organisation der höheren wissenschaftlichen Anstalten in Berlin*. HGS X, pp. 250–260. Discussed in Francois Lyotard, *La condition postmoderne*. Paris: Les éditions de minuit, 1979, note 109.
- 17 Friedrich Schleiermacher, *Gelegentliche Gedanken über Universitäten im Deutschen Sinne* (1808). Schleiermacher was concerned of the Prussian state's complete tutelage of the protestant church. Note the intimate relationship between the needs for academic freedom and the separation of church and state: in the Prussian state both higher education and religion suffered of state tutelage.
- 18 Columbia Encyclopaedia, 6th ed., 2001. "Academic Freedom."
- 19 John Henry Newman, *The Idea of a University* (New Haven: Yale University Press, 1996 [1854]).
- 20 "Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition. Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning."
- 21 Schauer claims that U.S. "[u]niversities have generally been unsuccessful in gaining special rights under the rubric of academic freedom." Frederick Schauer, "Principles, Institutions, and the First Amendment," *Harv. L. Rev.*, 112, 1997, pp. 84–85.
In *Rust v. Sullivan* the Supreme Court held that a university "is a traditional sphere of free expression so fundamental to the functioning of our society that the Government's ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the

- vagueness and overbreadth doctrines of the First Amendment.” 111 S.Ct. 1759, 1776 (1991).
- 22 Constitutional protection of free speech and other forms of neutralization of the communicative sphere are not sufficient to tame social power where it intends to dominate (in the sense of *herrschen*). Jürgen Habermas, *Between Fact and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, Mass: MIT Press, 1996) makes this very clear: “Bargaining processes are tailored for situations in which social power relations cannot be neutralized in the way rational discourses presuppose” (p. 166). Independent government agencies, though in principle legitimized as impartial entities, are quite often serving to reach such compromises *in lieux* of consensus where the rather balanced composition of such bodies (as well as the less impartial corporatist structures, e.g. tripartite bodies of industrial negotiations) are intended to provide something close to what Habermas (p. 167) calls “equal chances of prevailing.”
 - 23 BVerfGE 35, 114. See also Axel Azzola et al., *Kommentar zum Grundgesetz für die Bundesrepublik Deutschland*, vol. 1. (Erhard Denninger, 1989), p. 559.
 - 24 *Sweezy v. New Hampshire*, 354 U.S. 234 at 262 (1957) (Frankfurter, J., concurring).
 - 25 The autonomy of universities (a sphere of free speech carved out to be shielded from government intervention) offers an ironic illustration of this ambiguity. Universities (both public and private) exercise speech restrictions that resemble those imposed on civil servants, whose reward in exchange for their “loyalty” and loss of rights was their job security. Universities have the right to deny positions on the basis of viewpoint discrimination. In France a historian sympathetic to Nazi ideology can be denied tenure and scholars who refute the Holocaust have been subject to disciplinary procedures. In other circumstances, precisely because universities are autonomous, the general public protection of the freedom of speech does not extend to the university, as it might be a violation of autonomy. In some of the cases, fortunately, this is countered by express constitutional provisions or judicial interpretations that guarantee academic freedom.
 - 26 The same applies to neutral organizations, like broadcasting agencies or central banks. In the case of central banks, it is argued that total constitutional precommitment would prevent the possibility of crisis intervention by the executive where other than monetary policy considerations shall prevail.
 - 27 Given that all the development occurred in a democratic setting and in societies that held democratic values high, there are trends to incorporate democratic/participatory elements into the neutral institution. This, however, is highly problematic and may result in additional conflicts without increased neutrality or rights protection. Student and staff representation in faculty bodies (influencing academic appointments and curriculum) and patients’ rights representatives are two examples. For the complexity of the issue and the effects on neutrality of democratization see the German and French constitutional decisions regarding Faculty councils (finding of unconstitutionality of statutory employee representation in the defense of academic freedom.)
 - 28 David Cole, “Beyond Unconstitutional Conditions: Charting Spheres of Neutrality in Government-Funded Speech,” *N. Y. U. L. Rev.* 67, 1992, p. 675, 682.

- 29 Richard A. Posner, *The Problematics of Moral and Legal Theory* (Cambridge: The Belknap Press of Harvard University Press, 1999), p. 230. Further, according to Posner, the Administrative Procedure Act, 1946 that sets the frame for administrative rule-making “was in part a reaction to the politicization of many of the federal administrative agencies...The Act imparted a measure of political and ideological neutrality to administrative law...” *ibid.* Undeniably, as Posner also indicates, such neutralization was temporary, and the result of specific post-WW II circumstances. Neutralization is an unfinished (and recurrent) process where, however, de-etatization of a social sphere makes neutralization more far reaching. The special problems of independent agencies replacing political decision-making partly outside the still politically vulnerable civil service is discussed in András Sajó, *Neutral Institutions. Implications for Government Trustworthiness in East European Democracies*. See <http://www.colbud.hu/honesty-trust>.
- 30 Carl Schmitt used this approach to justify the use of power of his client, Reichs-president Hindenburg, in his debate with Hans Kelsen. Kelsen argued that the powers attributed by Schmitt to the President should in fact be granted to a Constitutional Court.
- 31 Benjamin Constant, *Principes de politique, Cours de politique constitutionnelle et collection des ouvrages publiés sur le gouvernement représentatif*, Paris, INALF, 1961 (Reprod. de l'édition de Paris: Guillaumin, 1872), pp. 19–21. Neutral political powers, contrary to Constant's expectations, might prove to be detrimental to the other branches of society. The Japanese armed forces were neutralized in 1882 in the sense that soldiers were removed from politics. They were beyond the control of civilian politicians; being loyal to the Emperor they were identified as being “above politics.” Ian Buruma argues that the arrangement made legitimate “all kinds of *coups d'état*.” Ian Buruma, Suicide for the Empire. *The New York Review*. Vol. XLIX. No 18. November 21, 2002, p. 24 at 26. Another ambivalence of neutral power is to be found in the case of Reichs-president Hindenburg, who was supposed to be above the political parties and who in an odd way offered a fictional model for Schmitt's neutral power, which ironically also provided the opportunity to Hitler's unlimited political *herrschen*.
- 32 This was easier in the second half of the 19th century when the press had more difficulty in generating publicity. It was easier in Gladstone's days to keep the appearance of a bipartisan posture in politics, partly given that only a rather homogeneous elite was represented in Parliament.
- 33 Sandel, *Democracy's Discontent* (Cambridge: Belknap Press of Harvard University Press, 1996), p. 8.
- 34 Philip K. Howard, *The Collapse of the Common Good* (New York: Ballantine Books, 2002 [2001]), p. 40.
- 35 Herbert Wechsler, “Toward Neutral Principles of Constitutional Law,” *Harv. L. Rev.*, 73, 1959, p. 1, 15.
- 36 *Ibid.*, p. 12.
- 37 Walzer, Michael, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1994), p. 7.
- 38 163 U.S. 537 (1896).
- 39 517 U.S. 620 (1996).

- 40 See Sajó, *op.cit.*
- 41 Economic signaling of the central bank is to be understood as an instance of communication.
- 42 Guy Haarscher, *Integrity and Neutrality of Legal Institutions*, 9th Annual Conference on The Individual vs. the State-Institutional Independence and Integrity, Budapest, May 3–5, 2001 Central European University, <http://www.ceu.hu/legal/Haarscher.htm> See further Guy Haarscher, *La Laïcité*, (Paris: Presses universitaires de France, 1998).
- 43 Owen Fiss, "State Activism and State Censorship," *Yale L. J.*, 100, 1991, p. 2087, 2100.
- 44 János Kis, *Az állam semlegessége* (The neutrality of the state) (Budapest: Atlantisz, 1997).
- 45 See Detlev F. Vagts, "The Traditional Legal Concept of Neutrality in a Changing Environment," *Am. U. J. Int'l L. & Pol'y.* 14, 1998, p. 83, 84.
- 46 It was argued recently that, given the "moral grounds" of international law, neutrality is *not* observed if the power not intervening in the conflict disregards the behavior of the belligerent parties and turns its back to violations of human rights, humanitarian law or the law of war. See Egon Guttman, "The Concept of Neutrality Since the Adoption and Ratification of the Hague Neutrality Convention of 1907," *Am. U. J. Int'l L. & Pol'y.* 14, 1998, p. 55, 58; Seymour J. Rubin, "The Washington Accord Fifty Years Later: Neutrality, Morality, and International Law," *Am. U. J. Int'l L. & Pol'y.* 14, 1998, pp. 61, 80–81. The moral attack on neutrality has been intensified by recent disclosures concerning the European neutrals' continuing economic relations with the Nazi regime during World War II. On these topics, see Jean Ziegler, *The Swiss, the Gold, and the Dead*, (1997). See further Brian F. Havel, "An International Law Institution in Crisis: Rethinking Permanent Neutrality," *Ohio St. L. J.* 61, 2000, p. 167.
- 47 See Krister Wahlbäck, "Neutrality and Morality: The Swedish Experience," *Am. U. J. Int'l L. & Pol'y.* 14, 1998, p. 103, 107. Much of Swedish economic activity was not in technical violation of the international law of neutrality. See *id.* at 107.
- 48 Consider, for example Huri Islamoglu's presentation *Political Economy of Legal Constitutions: Making of Global Markets Through IMF: Induced Institutional Reforms In Turkey* given at the Central European University on March 20, 1993 on the depoliticization of the reform of the Turkish tobacco production industry initiated by a bailout related adjustment plan of the World Bank. Manuscript on file with the author.
- 49 Desmond Bell, "The Corporate State and Broadcasting in Ireland: A National-Popular Program," *Cardozo Arts & Ent. L. J.* 11, 1993, pp. 337, 346–347.
- 50 John Rawls, *A Theory of Justice*, Cambridge, Mass. Oxford: Oxford University Press, 1971, Section 2. takes into consideration non-state social institutions that distribute fundamental rights and duties.
János Kis is certainly not taking a position against such a broader understanding as he accepts the perfectionist criticism of liberal neutrality and admits that the state does have a role in promoting values—within the limits of neutrality.
- 51 Carl Schmitt, "Übersicht über die verschiedenen Bedeutungen und Funktionen

des Begriffes der innerpolitischen Neutralität des Staates" (1931), pp. 97–101, 98 in Carl Schmitt, *Der Begriff des Politischen* (Berlin: Duncker-Humblot, 1996 [1934]).

- 52 Art. 76. reads as follows: "The Constitution may be amended by law. The acts of the Reichstag amending the Constitution can only take effect if two-thirds of the regular number of members are present and at least two-thirds of those present consent."

Schmitt's criticism regarding the partisan (neutrality violating) nature of the actions taken against extremist parties misses the point. Such measures do not *per se* violate the traditional understanding of neutrality within a democracy (or within any state—see Locke on non-toleration of atheists, above).

- 53 See the changes in the understanding of loyalty in Europe from the *Glasenapp* case to the *Vogt* case. (*Glasenapp v Germany*, ECHR Judgment of 28 August 1986, A104; *Vogt v Germany*, ECHR judgment of 26 September 1995, A323).

- 54 Nevertheless, a contemporary state may find it convenient to avoid taking positions in matters of identity for pragmatic reasons. In the postmodern world of complex and uncertain identities, the government shares the cultural uncertainty that prevails in the post-modern society; it will be reluctant to impose views and solutions on its society, as it seldom trusts the available solutions. (Compare this with the ideal of judicial neutrality that consists of the respect of individual choices, above.)

On Depth and Greatness

G. M. TAMÁS

Speaking of virtues of texts and authors, customary praise is reserved nowadays to truth, originality, and style. Depth, if it is ever mentioned, is used as a synonym for brilliance or acuity. The proper meaning of depth, with its echoes of early nineteenth-century German romanticism and metaphysics, is avoided.

It is avoided because it links truth to history, something that goes against the taste and the sensibilities of our age. Also, the notion of depth would move us to see arts, letters and philosophy as a unity, and contemporary wisdom will approach philosophy to science, not to arts and letters and humanities. On this depends our ideal of *Hochkultur*, and this has a strategic importance in cultural, and general, politics.

You could call both Kant and Beethoven, profound. You might not have been able to talk about the truth of a quartet or of a Kleist novella, but catharsis and illumination had been supposed to have been offered by philosophic theories and erotic poems. How can we sustain this common quality in art (encompassing literature) and philosophy? Where do evocation and analysis meet? Apart from specialists, we do not read old or “obsolete” science; but we read old philosophy which is sometimes based on bad science and worse logic. In spite of obvious errors we love old philosophy since it appears to us in some sense to be profound, to speak to us from the deep, like ancient art does, however embedded in cults of deities we do not any longer believe in or understand particularly well.

Depth has been associated with certain kinds of philosophy, grappling with the ineffable from Pascal to Schelling, from Wittgenstein to Simone Weil. The signature under which this association was made was difficulty.

Why should we pursue difficulty? Why would lovers of philosophy, inexplicably, choose difficulty over simplicity, seeming obscurity over apparent clarity? Why should ramshackle edifices of ill-designed metaphysical systems still elicit admiration and respect? Why should we try to “unpack” the complicated iconography of old paintings whose theology is irrelevant to us in order to understand—authentically and profoundly—a message not meant for us in a context alien to ourselves? What is the residue that remains after we have cleaned away the historical serendipity, the *bric-à-brac* of ancient time?

But distance is not merely temporal here. Our affection for the crazy texts of Antonin Artaud or Arno Schmidt, for non-representational painting, for atonal music, of anti-conventional avant-garde in general—in an epoch of rank conventionality and deliberate banality—demands explanation. The pathos of distance (Nietzsche’s term), the love of difficulty, the concomitant surmise of profundity had become characteristics of *Hochkultur* (“high culture” selected by high-brow taste), easy to recognize by a few authorial gestures. The two major art forms which have successfully bridged the gap between “high” and “low” culture—the realist novel and realist cinema from the 1930s to the 1960s—pretended a dialogue with the public. Thomas Mann, one of the most accomplished practitioners of the genre, addresses the reader constantly. The difficulty is lessened by the friendly invitation of the reader into the writer’s workshop. What German critics called the *Künstlerroman*—where the artist is the main character—presents us with the artist’s difficulty through empathy and sympathy: the writer’s problem becomes the reader’s problem. For example, the riddle of narrative vs. historical vs. physical time (the main technical and artistic difficulty of all epic literature) is one of the thematic topics of much highbrow fiction—Marcel Proust, Thomas Mann, Robert Musil, Italo Svevo—but the cognate problem of the distance between the fictional or fictive and the “confessional” authorial persona wherein the general modern problematic of personal identity is mediated had become the subject-matter of much middlebrow fiction as well from Romain Rolland to W. Somerset Maugham to Graham Greene to Philip Roth. The remoteness and complexity of art’s self-reflexion was being made accessible and user-friendly by the passionate assumption according to which “the author is *you!*”—the secularization of the romantic notion concerning the author (mostly the poet and the philosopher) as the representative of humankind.

It was Thomas Mann, too, who refined and elevated the hoary antithesis between "the artist" and "the philistine" into the guilty continuum between the artist and the bourgeois. In his stories and novels the artist (inverted and perverted, ill and neurotic, rebel and outcast) is both punished and rewarded by his desire and nostalgia for the bourgeois everyday, the health and the banality of the blue-eyed, blonde, Nordic middle-class ideal. But the bourgeois (in the innermost depths of his or her "cheating heart") nurtures a guilty passion for illness ("illness as a metaphor") whereby he or she can possess art, adventure, and rebellion within bourgeois intimacy and domesticity (*machtgeschützte Innerlichkeit*, interiority defended by authority, a once famous expression of Thomas Mann's) which is as risky and open and protected and luminous at the same time as a Vermeer interior (think of the "Officer and Laughing Girl" at the Frick). The genre of the "drawing-room ballads" or *Lieder*—where the affianced could accompany one another at the fortepiano—from Schumann to Schoenberg exemplify this artist-bourgeois continuum by the mutual longing for each other through the everlasting lyric motif of the brevity of life, transience of love, and mourning for the irrecoverable past.

The accumulatory asceticism of the Hanseatic bourgeoisie is mirrored by the irrecusable frustration of the romantic artist who cannot reach his or her amatory goal—ideally and by necessity, another human being—through his or her art, just like the mystic who cannot reach God, at least in this vale of tears, through prayer and self-flagellation alone. The fact that bourgeois interiority is mediated could not be entirely hidden by Thomas Mann's *Kunstgriff* (artistic sleight-of-hand) whereby the loss of money is expressed through illness (typically: toothache and consumption), a sublimation of Zola's genetic decadence representing economic failure. Artistry in Thomas Mann's *Buddenbrooks* is the direct consequence of the demise of burgher dynasties: loss of power equals loss of health equals artistic sensibility. Art as weakness does not only flatter the philistine but also consoles the decadent bourgeois by offering a spiritual and historical meaning to his or her bewildering defeat, the unavoidable result (for some) of market competition. The bourgeois—prosaic, mundane, thrifty and diligent—embodies both excess of power and excess of restraint, while the artist's excesses are just the opposite. Small wonder that Thomas Mann admired Wagner so: Wagner could boast of extreme romanticism and also of extreme business acumen.

But realist novel and realist cinema were nothing but an episode which coincided in time with another compromise, the social democratic welfare state. If high culture ceased to be capitalist society's daemonic double, so redistributionist bureaucracy managed to blunt the contradiction between anarchic market contest and conflict, and the features of cohesion, solidarity and common cause assumed by the state as seen by democratic ideology—for a while. These compromises were not able to survive; the truce imposed on capitalist society by the socialist threat within and without could not survive the eclipse of that threat, thus the enmity between market economy, bourgeois individualism and redistributionist-egalitarian democratic politics on the one hand, consumerist-escapist low culture and radicalized although depleted avant-garde on the other hand has been revived, and both victors and losers are in deadly earnest.

The social democratic, "welfarist" compromise in the economy, social provision and beneficence, patronage, politics, mass education, and democratized ("accessible") high culture still appears as "normalcy" for what passes for liberal opinion these days. But surely this cannot be serious. The institutionalization of "adversary culture" and of "counter-culture" could happen only through the direct agency or through the indirect pressure of the workers' movement. Brecht's theatre—now a mausoleum—is, sociologically, a unique phenomenon, never to be repeated. Neutered radicalism immured in university campuses is fully justified in being embittered and spewing forth invectives and hatred: Keynesian "normalcy" is a thing of the past, and it was always an exception.

Difficulty now occupies exactly the same place in our cultural perceptions as in the days before Lassalle and Bismarck. The audience of high culture may be proportionally less numerous and less well-educated than in the days of classicistic humanism, but no matter. What is considered "difficult" and "profound" is again declared to be the adversary. When the newly elected prime minister of Hungary (quite incongruously) mentioned the name of Hegel in his inaugural speech, the parliamentary Right erupted in boos and catcalls, followed by hearty guffaws.

Or consider the *cause célèbre* of Sokal's hoax. Quite apart from the subtext of traditional Anglo-American Gallophobia, (which is never criticized, unlike its much weaker counterpart, the famed French anti-Americanism) the winning side in the Sokal affair has success-

fully ridiculed some celebrated French thinkers from Deleuze to Kristeva. It has been conveniently forgotten that the metaphorical use of scientific terminology (I am willing to concede that it is and probably always was a questionable practice) is a recognized part of philosophical speech since before the Romantics, from Jacob Boehme to Franz von Baader, Goethe, Schelling, and Hegel, a tradition which starts with the Renaissance, once linked with vague hopes of a neo-pagan religiosity—elevated, rapturous but friendly towards daring research and experimentation—sometimes of Rosicrucian bent. The attempt of modern culture to concoct triumphant ideatic competitors to Christianity looks different on the European continent dominated by Roman Catholicism from Protestant America lacking an established church (let us not forget that the Church of England and the Lutheran churches in Germany and Scandinavia had been or still are established churches). American pietism and “transcendentalism” could be content with trying to create and popularize a new sensibility or disposition (*Gemüt*) since there was no unified official doctrine. Emerson had to compete with fellow writers in a relatively open market of quasi-religious ideas in comparatively tolerant New England. Continental thinkers had to compete with the canonized St Thomas Aquinas, St Bonaventure, Cardinal Bellarmin, or Cardinal Suárez or with the Port-Royal or with Protestant neo-scholasticism of the Wolff-Baumgarten variety. These competitors were not simply rivals but also legislators, judges, censors, executioners, and princes of the land. Intellectual subversion had to be roundabout, subtle, outlandish, *fantaisiste*, and, according to Heine and Marx, had to make up indirectly for the absence or failure of liberal revolution.

After the corruption and defeat of the revolutionary workers' movement, continental thought has fallen back to its old bad habits like lonely old people taking up, after decades of sexual activity, the auto-eroticism of adolescence. It is not an especially distinguished intellectual achievement to criticize as nonsense works which use poetic nonsense deliberately and overtly. Sokal's hoax was a tremendous victory for philistinism. Nobody would dream of exulting in supplying the irrefutable proofs demonstrating that, say, Edward Lear's poetry is nonsensical since Lear's poems are made ineffectual from the outset by the tactical assumption that they are a joke. *Capitalism and Schizophrenia*, Deleuze's and Guattari's great philosophic poem of subversive romanticism, by dint of *not* being a joke, will

have to be unmasked as such, to be made inoperative (*verharmlost*), made “unharmful” through being denounced as “irrational.” What is seen as deep insight by the defeated, is seen as nonsense by the victors. Rational is whatever fits relevant institutional blueprints and logistics presented, sometimes fairly, sometimes not, as scientific and logical. Sokal’s hoax is made even more poignant by Mr Sokal’s obvious and transparent honesty. Nor is he entirely wrong for worrying about the absence of validation criteria in contemporary continental thought. But can there be independent criteria to validate a love letter or a psychoanalytic confession? How do you validate aesthetic judgment? What are the criteria of depth in art and philosophy?

The impression of depth is first given by the contrast between opinion and true knowledge. If true knowledge is not what it is generally held to be the case, if true knowledge is not what appears to be the case, if socially accepted opinion has no intrinsic value, then many alarming inferences can be drawn. First, since socially accepted opinion is usually ideological and it either sustains or accounts for the prevalent social order, it ensues that the prevalent social order may not possess timeless validity, all of a sudden, social cohesion and hierarchy can be regarded as subject to change, the justification of suffering may become shaky, dissatisfaction may gain respectability.

Second, if true knowledge has hitherto been hidden either by ignorance or by design, doubts about our own capacity to elicit and ascertain truth will set in. Doubts concerning our cognitive capacity are customarily rather worrisome as they can serve as pretexts for obscurantism and voluntarism, the well-trodden path from skepticism to fanaticism, from methodical doubt to blind, arbitrary faith. Such were the inferences drawn by many German strivers and seekers from Kant’s *oeuvre*, something that quite frightened him and his true followers. Pious and impious strivers and seekers may believe that if all opinions are uncertain, then all opinions may have some kind of “human,” “subjective” relevance and have a “local” verity of their own not as representing truth, but instead *expressing* those who are voicing them. Thoughts as expressions of the inner states of discursing individuals or groups can be regarded as valuable as such: enunciation is a “human document,” a valuable testimony of a state of mind, valuable because authentically human. Such a document will not aspire to abstract validity or veracity, it will not bring out a generally communicable thought which could be criticized, refuted or

recognized, but only an evocative description of one human mind, perhaps characteristic or typical of an historical period or of a psychologically interesting cast of mind. Thus, an old text would be explanatory of its historical context, just like context should explain text. The direct relevance of *anything* created outside our own historical and intellectual position will be lost, hence the conspicuous absence of passionate curiosity regarding things foreign and ancient, for anything remote from our present existential environment—apart from an increasingly pettifogging philological antiquarianism, scoring smug points concerning unimportant information.

So, if true knowledge might be entirely alien to received opinion and if—as a result—our attempts at discovery would reinforce doubts about our cognitive capacity, what appears “deep” to us will be pointed out as rather unsettling, *bouleversant*.

The third point is: if depth is always shown to be somewhere beyond our habitual convictions, opinions, prejudices and customs (which are but irreflective and repetitive *modus operandi*), then whatever is deep will be instantly recognizable by its strangeness. “Strange” as opposed to “familiar” is known in art as “grotesque” or “wondrous” or “fantastic.” Romantic art’s predilection for “gothic” and “exotic” denotes a search for deep wisdom signifying hidden truth to which only unfamiliar paths could lead. The romantic *topoi* of wandering, pilgrimage, exile point towards a search for an irreligious beyond. In the end, though, such a quest might disappoint. (“... C’est Cythère, / nous dit-on, un pays fameux dans les chansons, / Eldorado banal de tous les vieux garçons. / Regardez, après tout, c’est une pauvre terre.”—But, at the same time: “O Mort, vieux capitaine, il est temps! levons l’ancre! / Ce pays nous ennuie, ô Mort! Appareillons! //... Plonger au fond du gouffre, Enfer ou Ciel, qu’importe? / Au fond de l’Inconnu pour trouver du *nouveau*!”)

Goodness, then, and sagacity can be found in the familiar; but not depth. Depth is distant, remote, strange, fantastic, unsettling, mysterious, exotic, grotesque, *fantasque*. “Deep” is, of course, perennially opposed to “superficial”—but what does “superficial” mean? Superficial is he or she who is satisfied with what appears, the quiet person unwilling to tear the smooth silk of *Anschaung* (“beholding the visible,” maybe?), unwilling to disturb the unsullied moment depicted by the anhistorical adverbs of common parlance (“philosophically,” “stoically”...), the person content with the context within which he or she

finds himself or herself at home. Indeed, the superficial person is supposed to be at home while the strivers and seekers are journeying abroad. The strange is preferable to the familiar because the profound is always strange since depth is not *given* to us without any further ado. What is deep is achieved by difficulty. But what does this difficulty consist in? We understand philosophy, the genre in which depth is of paramount significance, only if we are inclined to jettison identity. This does not require us to be blind to identity, as Socrates explained to Crito, assuming his obligations as an Athenian in spite of his objections as to what it meant then to be Athenian. But again, as Socrates tried to make the jury understand, the duties imposed on him by philosophy which set him against what he was supposed to do and to believe as an Athenian citizen and a Hellene, had superior claims. These duties entailed questioning. Relentless questioning would relativize received opinion on which democratic social order depends. Power in democracy is mediated through opinion, it is not sheer coercion any longer. Questioning does not oppose a rival doctrine of faith to received opinion. To doctrine a methodical practice is being opposed, by its very nature open-ended and uncertain. Philosophic questioning does not offer a home in a system of beliefs fitting circumstances. It may cure the ills of rationality but it will not necessarily reconcile you to circumstances or to your own unsatisfactory self. Therapy will do that, therapy is patriotic. Entering philosophy, identities are being jettisoned because philosophy cannot be understood otherwise.

We live within social and cultural contexts, this is how we interpret ourselves and others: context connects. Will “deep,” that is, philosophic understanding help us to interpret ourselves and our fellow humans since philosophic depth is clearly transcontextual? Self-reflexion, self-understanding, self-interpretation will elucidate context since social beings can understand themselves and one another by interpreting and re-interpreting their society in a representative way in which society can interpret itself without upsetting too much whatever is the case. Tinkering with transcontextual reading of human existence is in itself a bold attempt at radical change since human existence unfolds in socio-cultural contexts. Philosophic questioning does not explain these contexts but rather, attacks them. Philosophic profundity must be anti-social, e.g., when it contrasts custom with morals as philosophy does.

Will then *dissent* be a sign of profundity?

Fourth, depth is polemical. Deep insight will tell you that things are not so. Depth is alterity, the quality of thought which will negate the obvious, the well-worn, the well-honed, the handy, the friendly, the reassuring, the safe, the comfortable, the pleasant, the being-used-to, the wordly-wise, whatever you have learnt to put up with, the identical, the repetitive. Depth is destructive. We are wont to consider deep those thoughts which show that reality is different from what we have been led to believe it was. *Amor fati* is not profound: this is why Nietzsche rejected philosophy.

Fifth, depth can be (and it is, by positivists) seen as irrational, or worse, as illusory. The attempt of the *Querdenker* to achieve trans-contextual insight is difficult because language is socially contextual, therefore depth will stammer. Both rationality and society are concatenations of systems, closed clusters of self-explanatory semantic univocity: it is very easy to regard “outside” criticism as irrelevant or irrational. Deep insight expresses itself, poetically, through savage metaphor, defying semantic gravity. Schelling and Hegel might sound as claptrap to whom the frontiers of her language are the frontiers of her world. Hilbert, Cantor or Einstein are counter-intuitive, too, but mathematics is free to create and re-create its own semantic convention, a freedom confined and usually safe from questioning. Mathematicians and theoretical physicists are kings: they issue decrees and they do not have to explain. But all that transcontextual radicality can find as an excuse is poetic license. You must take on trust what is being said against trust. Nevertheless, there can be found one, as it were, posthumous triumph of philosophy in modern social science: Marx, Weber, Durkheim, Mauss, Lévi-Strauss, Braudel had been able to demonstrate that the “objective,” internalist view of society is erroneous. The theory of commodity fetishism and, conversely, Weber’s analysis of rationality as technology, are perhaps the most successful instances of an attack on *Verstand* from the point of view of *Vernunft*. Similarly, the devastating critique of the customary view of motivation for human action by Freud and, from the opposite point of view, by Durkheim and Mauss, shows the intracontextual interpretation of human agency as shallow. In modern culture, “depth” is most characteristically attributed to Freud’s psychoanalysis. Freud persuades us that we do not do things for reasons we think we do, but for reasons hidden from us, hidden that is by our-

selves in order to safeguard illusions we deem to be socially and morally useful. Surplus value and the unconscious are not *given*, they had to be discovered, countering the resistance of the researchers themselves. The affliction of working against one's own preternatural inclinations is another signifier of profundity in modern culture which bears, of course, some resemblance of pre-modern ascesis, being the intellectual counterpart of heroic sacrifice. The assumption of Marx's, Nietzsche's and Freud's *suffering*—a consequence of these thinkers being socially marginalized and ostracized because of revolutionary insights these thinkers themselves have been ambivalent about and unhappy with—is another symbolic trait of our idea of profundity. The “genealogy of morals”—which could be the general title for modern thought—is the theoretical form of “disenchantment,” the signature of modernity according to Max Weber, Hans Blumenberg and Marcel Gauchet. The “genealogy of morals” means analyzing asunder, analyzing to pieces the presuppositions of the liberal bourgeoisie, the main audience for modern talk. The perversity of radical modern talk going directly against the interests of the audience which is supposed to subsidize it and be inspired by it, a thoroughgoing version of *épater le bourgeois*, an imperious demand for toleration for a discourse which will not hesitate to undermine the preconditions of such toleration, to wit, liberal bourgeois prejudices and illusions, makes radical modernity rather dubious morally.

The only exception might be revolutionary Marxism since it attempted to change the nature of its own reception by being instrumental in creating a new audience—the movement itself—whose interests are not supposed to be ill-served by the radical talk aiming at replacing the usual assumptions of social cohesion and *status quo ante* with analyses in depth of why things are as they are which is to say why are they utterly wrong. It must be frankly acknowledged, though, that the attempt to create this parallel world, an authentic proletarian counter-culture has ultimately (and abysmally) failed. Which does not mean that Bertolt Brecht and Walter Benjamin could or should be understood independently of this gigantic effort: Benjamin's reception theory is part and parcel of this historic experiment, and the idea of the authorial pre-emption of reception illuminates the essence of revolutionary cultural politics. In Brecht and Benjamin (echoing themes in Karl Korsch) the creation of a new audience is the pre-condition to sublate the perversity of the “geneal-

ogy of morals.” Subverting the intellectual preconditions of the bourgeois life-world may become (and it has become) a consumer’s delight, the seeming irrationality of radical philosophic depth can be integrated into bourgeois rationality via tolerance, the irreverent reductionism of the “genealogy of morals” can be transformed from criticism into apology (see the fashion of “evolutionary” approaches); *corruptio optimi pessima*: the only excuse for the poetic license of radical talk, for alterity’s pretense to profundity, for a transcontextuality guaranteed only by *weltanschaulich* rhetoric can be a serious and sincere wish for revolution. If the world is left (or kept) as it is, the idea of depth is ridiculous; transcending social context philosophically is an empty (counter-semantic) gesture, the “unmasking” oratory of the “genealogy of morals” is mere effrontery if there is no genuine practice of a revolutionary *transcensus* which might associate social depth to the anti-social counter-intuitions and counter-semantic irrationalities of what was perceived as great in the modern continental philosophical tradition.

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However, if we wish to consider greatness, we should turn to history. Consider the speech the Athenian general Euphemus gave at Camarina in 415/4 BC trying to convince the Camarinians to support his fleet and army against the Syracusans, according to Thucydides, VI, 82–84 (Rex Warner’s translation):

[We do not] think that we have done anything wrong in subjugating the Ionians and the islanders, who, according to the Syracusans, are our oppressed kinsmen. The fact is that these kinsmen joined the Persians in attacking their mother country—namely, Athens—and, unlike us, when we abandoned our city, did not have the courage to revolt, which would have meant losing their property. Instead of this they chose to be slaves themselves and wanted to make us slaves too. We therefore deserve the empire which we have, partly because we supplied to the cause of Hellas the largest fleet and a courage that never looked back... We are not making any dramatic statements such as that we have a right to rule because single-handed we overthrew the foreign invader, or that the risks we took were for the liberty of these subjects of ours

any more than for the liberty of everyone, ourselves included; no one can be blamed for looking after his own safety in his own way. So now it is for our own security that we are in Sicily, and we see that here your interests are the same as ours.... We have told you that it is because of fear that we hold our empire in Hellas, and it is also because of fear that we have come here to settle matters for our own security, together with our friends; not to enslave anybody, but rather to prevent anybody from being enslaved.

This is a speech any military commander in the service of a slightly plutocratic democracy—such as Gen. Norman Schwarzkopf or Gen. Tommy Franks—could pronounce; or is it? It is a speech of great hability and honesty couched in the language of democracy, the language of liberty and of self-interest. What we should now briefly examine is whether the language of democracy is or is not reconcilable with greatness.

Greatness, like depth, is one of those suppressed notions which sound so old-fashioned because the establishment has given up grandiloquent hypocrisy (except in extraordinary situations) and the counter-establishment has been annihilated. The new, mundane and humdrum tone of the establishment reflects on the one hand the final disappearance of traditional élites which have clung tenaciously to power long after having outlived their sell-by date, and on the other hand, nobody can hide any longer from the *hoi polloi* the nature of their true condition shamelessly exposed on reality TV. The porcine countenance of contemporary bourgeois democracy is no secret. So why bother with qualities in short supply for which there is no considerable demand anyway? Given the swinish cast of our society's visage, any talk concerning depth and greatness will have to be historic and *passéiste*. Moreover, greatness is, unlike goodness, a formal concept of pre-Kantian pedigree, a virtue in the sense of excellence, and you can excel in anything, including evil. Nevertheless, greatness is not as incomprehensible as it may appear now.

First, let us examine Euphemus's speech as a metaphor for democratic greatness, presupposing that this quality belongs foremost to active citizens, to doers. As a doer, as an agent of his country, Euphemus wants success, as a military man, he wants victory, and for that victory, he needs strength, and for strength, he needs allies. He has to win over the Camarinians in order to defeat the Syracu-

sans, but not at any price. He cannot compromise the dignity of Athens. By lying about Athenian intentions, trying to ingratiate himself with would-be allies, he would soil that dignity. So he has to find a middle way between dignified and “manly” frankness, and persuasion. This persuasion succeeds rhetorically because of an appeal to universal human condition by showing nations’ universal need for safety and freedom. Everybody needs those; therefore Athens cannot be blamed for ruthlessly pursuing them. If her liberty is threatened by others’ servility, she has no choice but to subjugate those who would be slaves anyway but possibly not theirs, but the Persians’ slaves. Subjugation and servitude are thus shown to be, under circumstances, the instruments of liberty. Interestingly, for Euphemus/Thucydides, it is not Athens’ undisputed bravery and daring which would prove her claims but her legitimate self-interest in preserving her liberty. Liberty here is not defended as a principle (that is assumed) but as a matter of political expediency, in other words, a question of paramountcy, of superior power. As a good civil servant, Euphemus does not dispute the fundamental principles of Athenian statecraft: his task is to protect them, not to interpret them. What is remarkable here, is that Euphemus presupposes an understanding for alien power in foreign nationals given the universal fact of power: this is the first element of greatness here, of his treating his foreign interlocutors as adults, as potentially equal claimants and pursuers of power. We may be competitors, but we do compete for something we all recognize as worthwhile, as valuable. In stating what I consider to be my legitimate self-interest I am not humiliating you because thereby I do acknowledge your comparable claim to represent yours. The recognition of equal moral dignity, even between contestants happens to be a *leitmotif* of my friend János Kis’s life-work, a recognition I feel to be the basic presupposition of democratic greatness.

Another possible instance of specifically democratic greatness is the acknowledgment of universal human frailty, as it were, a proud confession of weakness. This extraordinary admission of Euphemus of the main motive of the Athenian military expedition: fear. (And this is what Generals Schwarzkopf and Franks would never acknowledge: they would deny the universal human fact of fear, because of the contemporary bourgeois—i.e., racist—denial of power to “illiberal” inferiors.) What an enviable self-confidence, what an admirable peace

with oneself does this confession entail, if you consider that Euphemus's oratory aims to impress, to persuade, to convince, even to threaten. What purpose could be served by this shocking admission of fear? The faith in the unassailable dignity of human beings who are no strangers to weakness. Again, the appeal to universal human condition is the rhetorical stratagem that cannot fail to impress, since honest people will not deny that they are afraid of defeat, dependence and servitude. Empire is a creature of fear and ought to be regarded as such, it is therefore a painful necessity which only liars would seek to deny. The immodest exposition of foul humanity is the only way to talk among adults in the Kantian sense, among human beings freed from their self-caused nonage. It is this kind of democratic greatness that Julien Sorel, Fabrizio del Dongo and Lucien Leuwen are missing after Waterloo.

Greatness is related to power but it is not related to success (with which it is replaced nowadays and of course, with "celebrity"). Hector and Hannibal and Pompey had been defeated but they were universally admired. Nor is greatness immediately dependent on strength. Strength is a precondition for action, a piece of biographical luck. But greatness is action. The great man—we do not speak customarily of great women, and greatness in women adheres to such victimized rebels as Louise Michel, Rosa Luxemburg or Emma Goldman, heroines who suffered a great deal and whose mission had failed—will act in the face of adversity and prevail, at least in a moral sense. The great person goes it alone but finally he or she would represent or express the supreme and certain faith of the community, maybe not the apparent and direct belief, but what would become manifest as an outcome of his or her action, an action which creates new beliefs, in other words, new vistas, new vantage-points from which, incidentally, his or her own greatness or distinction would become plain to see.

But how can the "representative men" and women of democracy be great when recognition in democratic society comes through the medium of public opinion? G. W. F Hegel says in his *Philosophy of Right* (H. B. Nisbet's translation, §§ 317 & 318):

Public opinion...embodies not only the eternal and substantial principles of justice—the true content and product of the entire constitution and legislation and of the universal condition in general—in the form of *common sense* (the ethical foundation which is

present in everyone in the shape of prejudices), but also the true needs and legitimate tendencies of actuality. [...] Since what is the issue here is the consciousness of the *distinctive nature* of the views and knowledge [of individuals], the worse the content of an opinion is, the more distinctive it will be; for the bad is that whose content is entirely particular and distinctive, whereas the rational is that which is universal in and for itself, and the *distinctive* is that on which opinion prides itself. [...]

Public opinion...deserves to be *respected* as well as *despised*—for its concrete consciousness and expression, and respected for its essential basis. Which appears in that concrete consciousness only in a more or less obscure manner. Since it contains no criterion of discrimination and lacks the ability to raise its own substantial aspect to [the level of] determinate knowledge, the first formal condition of achieving anything great or rational, either in actuality or in science, is to be independent of public opinion. Great achievement may in turn be assured that public opinion will subsequently accept it, recognize it, and adopt it as one of its prejudices.

The despicable distinctiveness and particularity—praised as originality by Hegel's old adversaries, the romantics—of an opinion, an empty expression of individuality rather than an effort towards rationality which is impersonal is, after all, deserving of respect in a bourgeois democracy, since this liberal democracy is not merely colour-blind, but also *mind-blind*: we owe an abstract kind of respect even to those of our fellow citizens who are Nazis or some such. The content of citizens' minds are and ought to remain a closely guarded secret even if we are perfectly aware of it. The sum total of unexamined individual opinions—the constitutive force behind some decisive features of democratic politics, limited by constitutionalism and judicial power—is vague, unsteady, a shifting subject to perpetual change, even to fashion, and open to manipulation. The democratic great man and woman must, on the one hand, accommodate it and esteem it as the legitimate source of his or her power but, on the other hand, he or she must break its shackles in order to achieve what is rational and to be able to indulge in the delights of discovery, invention and insight. So the democrat's rapport with greatness will be probably always an ambivalent and hypocritical one.

"Power to the people" will always mean power to a people that does not exist as yet, a people free of despicable prejudice, whim and ignorance, democratic greatness is the greatness of a democrat giving voice only to a people-to-be. But is this truly democratic?

Hardly.

Greatness is conceivable if you distinguish the class-in-itself from the class-for-itself (or "hegemonic" class), since this opens the field to tragedy. The dialectical identity-and-non-identity of the in-itself and of the for-itself is the key to why can modern tragedy be grounded on weakness.

Characters, like the Marquis de Posa in Schiller's *Don Carlos* or Torquato Tasso in Goethe's play or the Prinz von Homburg in Kleist's, are conspicuous in their indecisiveness, even temporary cowardice, uncertainty and what's more, they are sometimes beholden to habit and custom and cliché and prejudice. Antigone's strength is her determination to uphold ancestral law, braving destruction. The modern hero's calling is to internalize tradition and, at the same time, to defy its untruth. He or she will both affirm and deny the nobility of convention. The modern hero is ashamed of having to break with noble tradition (deference, piety, obedience) and ashamed of his or her compulsion of having to step forward in the nudity of the unconventional, individual personhood, unprotected by the garb of cherished and familiar social context. Modern heroism is embarrassing—and, according to Tchekhov, no heroism at all, only embarrassment—, it makes you blush. Ibsen's unconventional heroes are ridiculous, since their heroism is rooted in desire, and desire is hilarious to all non-lovers. And that is what other people generally are. Heroes and hero-worship are romantic themes and are supposedly countered by Christianity and capitalist democracy. Christian humility and meekness, Christian preference for the poor, for children, for innocence, for the purity of the ignorants' heart meets the democratic suspicion of larger-than-life, inspired leaders—a parallel mined by Nietzsche. The practice of ostracism was seen as an attempt by Attic democracy to eradicate or, at least, to contain greatness.

But the deadliest snub delivered by Nietzsche's mortal enemy, Plato, in *The Republic* VIII 561 b-e), describing democratic man thus (Allan Bloom's translation):

[H]e lives his life in accord with a certain equality of pleasures he has established. To whichever one happens along, as though it were chosen by the lot, he hands over the rule within himself until it is satisfied; and then again to another, dishonouring none but fostering them all on the basis of equality.

"Most certainly."

"And," I said, "he doesn't admit true speech or let it pass into the guardhouse, if someone says that there are some pleasures belonging to fine and good desires and some belonging to bad desires, and that the ones must be practiced and honoured and the others checked and enslaved. Rather, he shakes his head at all this and says that all are alike, and must be honoured on an equal basis."

"That's exactly," he said, "what a man in this condition does."

"Then," I said, "he also lives along day by day, gratifying the desire that occurs to him, at one time drinking and listening to the flute, at another downing water and reducing; now practising gymnastic, and again idling and neglecting everything; and sometimes spending his time as though he were occupied with philosophy. Often he engages in politics and, jumping up, says and does whatever chances to come to him; and if he ever admires any soldiers, he turns in that direction; and if it's money-makers, in that one. And there is neither order nor necessity in his life, but calling this life sweet, free and blessed he follows it throughout."

"You have," he said, "described exactly the life of a man attached to the law of equality."

Inconsistency, hesitation, a predilection for fits and starts is indeed a characteristic of the democratic person, given her impartiality, non-commitment (*Unbefangenheit*), her lack of *suite dans les idées* and coherence caused by her compulsion to judge things on their merits alone. Modern bourgeois democracy is especially conspicuous by its disinclination to condemn. This unwillingness to be "judgmental" comes from the correct insight according to which moral excellence (or the lack of it) is not merely a feature of what people are (even if this "being" is historical *ergo* impermanent). If you point out that certain social groups are slavish and conformist, even if you think they had been enslaved and brainwashed by the system, nevertheless you are telling them that they are slavish and conformist,

therefore they are worthless. Criticism is humiliation and can be accepted only by people at least half-prepared to raise up against their servitude and stupor, so they can shake off criticism as belonging to a sinful past. All or most moral attitudes can be tolerated *qua* expressions of human experience, of lived identity. Even repellent deportment might be sanctified because it is regarded as the genuine outcome of one type of human commerce; this outcome we shall call "culture," the main notion of recent capitalist democracy and its main conversation-stopper.

Hegel's criterion of greatness was doubted by people as different as Friedrich Engels, Leo Tolstoi and Herbert Spencer: independence from public opinion appeared to the latter as an impossibility. Tolstoi's Napoleon was a blind instrument of blind forces, chiefly among them indeterminacy, accident and ignorance.

Napoleon is, of course, the epitome of greatness under modern democratic conditions. But this grandeur may be perceived also as an expression of, rather than a challenge to, *la prose du monde*. We do not expect grandeur to be eclectic, to be mixed, to be ambitious. (Treats exaggerated farcically by the *bas-empire* of Louis Bonaparte as readers of Karl Marx might recall.) Napoleon was a hero for reactionaries and revolutionists alike, thus a hero for none. His greatness was but a promise of greatness or a memory of greatness, and cloaked into a incipient cult of success and celebrity. The sentence of the greying cuirassier in Stendhal—many of your warriors, Sire, have died in order to destroy what you just have restored—gives the rough outline of the unfolding political *kitsch* wherein the empty gesticulation (*Gebärde*) of brute force replaces heroism, where the dramatic roll of drums celebrates exactly nothing, after which supreme leaders of mega-empires would imitate cheap film stars to remind us of the fact of their paramount power envied but derided by their subjects. The hero of the ordinary bloke supposed to be an ordinary chap himself, an aggrandizement of limitedness, not a breakthrough to infinite.

If transcending what there is deemed impossible, then freedom as power, that is: greatness, becomes what the young Hegel thought liberty was anyway: a crime.

In Stendhal's novels, the absence of greatness is like a disease, it poisons people's minds and it poisons their friendships and love affairs. According to Stendhal, it is impossible to live without great-

ness: bourgeois democracy without greatness lacks maturity or, at least, it lacks good reasons for action for anyone who would aspire to the title of citizen. The inference from the impossibility of Napoleonic grandeur after Waterloo is drawn by a young man called Raskolnikov. It is he who is still the hero of our age.

Part II

Democratic Transition

The Occupation of Iraq and the Difficult Transition from Dictatorship

ANDREW ARATO

Regime Change at the End of the War?

In spite of the great international mobilization for peace, and the subsequent failure to secure Security Council authorization or even a “moral” majority of council members, the United States launched and easily won its war against Iraq. It was an illegal aggressive war, an international crime against the peace.¹ Its supposed legitimacy was however linked to finding and destroying weapons of mass destruction and creating the framework for democratic regime change in Iraq.² As of the moment of writing (early May) the process of *post festum* justification along the first of these lines has not been going very well. Admittedly, it is surprising, given the reports and suspicions of the Blix team that there seem to be no weapons of mass destruction to be found by the Americans, who are capable of the most aggressive forms of interrogation of suspects. Thus the project of democratic “regime change,” already important not only for the Pentagon neo-conservatives, but also for the so-called reluctant hawks has become even more important to those seeking justification for what is otherwise unjustifiable: the outright violation of a provision of international law the United States did so much to establish at Nuremberg.

The idea of democratic regime change gained its salience in the late 1980s and early 1990s when, beyond all revolution and reform a new fundamental method for the radical change of political systems emerged as the key path of the transformation of East Central European countries. Along with anticipations in Spain and Latin America and a dramatic application in South Africa, what János Kis called “regime change” or “coordinated transition,” meaning centrally negotiated transformation coupled with legal continuity, was established as a dramatic, new path from dictatorship to constitutional democ-

racy. Kis was not only the main leader in Hungary of the democratic opposition, that was a key actor in one such "regime change," but was perhaps the most sophisticated theorist anywhere of the new model of change.³

Since the early 1990s the prestige of the transitions to new democracies has been tremendous. Countless books and dissertations have been written on the topic, and subtopics like civil society in the transitions, constitution making, retroactive justice, and the relationship of economic and political transitions. At the same time it became clear that there were whole regions of the world, and in particular the Islamic world, where the new democratic wave did not manage to get a secure foothold. These regions indeed became important breeding areas for new, aggressive anti-liberal democratic trends. It was in this context that the neo-conservative project of linking a benevolent imperialism with democratization was born. While intellectually shallow, this project found ready support among elements of the American right that found difficult to imagine an international order with the end of the Cold War where U.S. leadership was justified in terms of a crusade against an evil regime, and was based on military might and pre-eminence. After the events of September 11, 2001 it was possible to link the new ideology to a national strategy of establishing the security of the United States through preventive (misnamed as preemptive) acts of force against countries capable or inclined to sponsor attacks on the United States. Even as the conception was greatly expanded, its normative core remained that of democratization (occasionally linked to or replaced by human rights), and after the first of the anticipated preventive war how this model of justification fares remains a very important matter to all political actors concerned.

At present, a pseudo-democratic government relying on external force or a theocratic authoritarian regime or even the fragmentation of the now stateless country seem much more likely than representative government and the rule of law for a unified Iraq. Yet it is hard to gloat over the probable failure of the project of democratic regime change. As far as the long-suffering Iraqis are concerned, it would be immoral to celebrate the probable failure of accountable government and the rule of law. This outcome is however not inevitable, and the uncertainty puts staunch opponents of the war and all remnants of the peace movement in a difficult position as to their hopes, and

perhaps demands. If we see a narrow path of opportunity for democratic change in Iraq, should we point it out and even insist that it be taken seriously? Would we thereby be trying “to redeem the unredeemable” (Habermas in *Die Frankfurter Allgemeine*). Would even a minimally democratic outcome in Iraq retrospectively justify the American war, and provide ideology for the architects of empire to embark on similar ventures in the future? Should we not rather hope for the total defeat of the imperial project by whoever has the means, so that the neo-conservative ideologists in the Pentagon, the “wag the dog” strategists among the President’s men, and the reluctant hawks of all stripes be taught a much-needed lesson?

I admit some ambivalence on this fundamental question. But, it seems to me that it is always a good rule of thumb to avoid thinking that “the worse, the better.” In this case, “worse” could mean endless civil war and a humanitarian disaster for a country of 23 million people. Discrediting the aggressors, however satisfying, is less important than contributing in however small a way to the freedom for the Iraqis. That may be possible if significant political forces in the United States (including the Democratic party in an election year), the United Nations and Europe could be helped to see the issues of democratization in the now occupied country more clearly.

In fact there is a danger in trying to redeem the unredeemable. The kind of bad compromise Habermas seems to have been thinking of when he used this phrase is one in which the United Nations would somehow rescue the Americans, after the occupation of Iraq, by providing some kind of international legitimating cover for a unilateral enterprise of political imposition. While the United States government has already made clear that it does not desire any serious U.N. participation in the political transition, it does seem to want a transparent cover of this type, as long as it will not do too much to restore the prestige of the international organization. The U.N.’s role would be largely reduced to removing sanctions, and mere humanitarian assistance, and thus to participate in a humiliating side-show. The U.N. special coordinator for Iraq, the U.S., is willing to concede would have little more than unspecified informal influence on the occupation “Authority” and a projected Iraqi interim government.⁴ Thus, if genuine international, rather than U.S., supervision, monitoring and control of political negotiations are, as I believe, required for any kind of legitimate democratic bargain in Iraq,

this pre-condition can be achieved only by overcoming the intense resistance of American policy makers. They will be willing to consider an international alternative only if their own unilateral efforts are defeated. Such an alternative must be clearly articulated and available as soon as possible if it is to be relevant for the only force that can definitively defeat the current U.S. scenario, the radical Shi'ite clergy. Even if the project of external imposition were defeated, it would remain a great challenge to channel the developing Shi'a movement in a direction compatible with the representation and rights of all other groups in this explosively divided society.

Externally Imposed Revolution?

In order to understand the chances of democracy in radical political change, it is best to start with the transition path now in motion. The term "regime change" used by the U.S. administration and the press is in fact ambiguous. It may refer to any replacement of one regime by another, and thus to a variety of paths. In Hungary and elsewhere in the late 1980s and early 1990s, the term came to mean the specific path of negotiated transition as distinguished from both reform and revolution. In either case, it is important to note the significant differences among paths, their defining characteristics and likely consequences. In the most persuasive comparative analysis, that of Kis, reform is defined as continuity of both legitimate authority and legality, revolution as rupture in both dimensions, and *regime change* or *coordinated transition* as rupture of legitimacy but legal continuity.⁵ Legitimacy is understood here in the sociological sense of general or at least elite acceptance of the claims of the rulers to justify their rule, while legal continuity is understood, following Hans Kelsen, as the limitation of change to a form that relies on a regime's own rule of change. The four-part scheme of Kis can be expanded to eight, if we differentiate among externally induced and internally generated versions of each path. Evidently revolutions (as all over Eastern Europe in the late 1940s), but also internal reforms and self-coups can be and have been promoted, induced, and even forcefully imposed by outside powers, even if the degree of the external role is often open to question. While I am not aware of even a single case of negotiated transition in the context of legal continuity

having been externally produced, there seems to be no logical reason why this path too should not be possible.

Table 8.1 *Transition Paths* (Andrew Arato, after János Kis)

<i>Legitimacy</i>			
<i>x 2</i>	<i>Continuous</i>		<i>Rupture</i>
<i>External Legality</i>	<i>Continuous</i>	<i>Reform</i>	<i>Coordinated Transition</i>
<i>Internal</i>	<i>Rupture</i>	<i>Autogolpe</i>	<i>Revolution</i>

It is not hard to demonstrate today the superiority of coordinated transition as a path to democracy. Reforms always seek to preserve an original identity, and reiterated reforms leading to the end of a dictatorship take a very long time, as recently in Mexico. The “state strengthening” authoritarian consequences of revolutions are almost indisputable empirically, and Hannah Arendt’s masterly analysis remains the best treatment of the elective affinity between revolution and dictatorship, even if in *On Revolution* there is an entirely exceptional case that avoids this logic: the American Revolution. In the case of a self-coup, the chances of democracy would rest with the democratic intentions of an authoritarian force—an inevitably rare commodity. As against these paths, the late twentieth-century experience of negotiated transitions, from Spain to Poland, Hungary and South Africa has dramatically demonstrated the possibility of relatively rapid replacement of an authoritarian legal order by a democratic one within the framework of legal continuity.

Unfortunately however, as Linz and Stepan demonstrate, this path is available only where social forces capable of negotiation have emerged within the dictatorship. This is possible according to them in either authoritarian or post-totalitarian, but not totalitarian regimes.⁶ Others have rightly focused on a split within the ruling elite required for negotiated transitions, a precondition unlikely to be met within conditions of extreme and terroristic repression.⁷ In the case of totalitarian or near-totalitarian regimes there may very well be a

high likelihood that only defeat in war and "occupation by a democratic regime and externally monitored democratic installation" can lead to democracy.⁸

If there is a path to democracy in Iraq, its beginnings at least will lie in defeat in war, occupation and externally monitored installation. It should be noted right away that applied to Saddam's Iraq the label of "totalitarianism" may have the role of justifying war, occupation and external installation, rather than explaining why these actions on the part of the United States were the only path from dictatorship. Given the nature of the Shi'ite mobilization, so soon after the end of the war, there should be some room to question an analysis such as that of K. Makiya's *Republic of Fear*. Very high levels of brutality and repression moreover are possible in non-totalitarian as well as totalitarian dictatorships. I am not competent, however, to debate the issue of the exact nature of the Iraqi dictatorship. It is now moot to the extent that war and occupation have taken place, and the justification, right or wrong, that it was impossible to remove Saddam's dictatorship any other way can no longer be tested against other possibilities. What is not at issue is that Iraq's dictatorship has been smashed, entirely outside this regime's own rule of change (if it had one), and that all this happened through the military intervention of an outside power. Thus, legally speaking we have a case of externally imposed revolution taking place in Iraq.⁹ Can it lead to some kind of democracy?

Our first impulse that external imposition would only make a revolutionary road to democracy, already nearly impossible, only more difficult, may be wrong. Linz and Stepan at least, with the German and Japanese cases in mind, seem to think that external imposition can accomplish a democratic transition (though not necessarily consolidation) where revolution is not likely to. While the empirical evidence based on two cases (whose relevance I will examine in detail) proves little, it could be nevertheless argued that external imposition has the advantage that an external occupier and monitor not only can remove forces of the old regime but could also block efforts of newly mobilized forces to impose a new non-democratic solution. External occupation may force such new movements and parties to work together and accept solutions that would not be their first preference, but which they can come to accept as "the only game in town." Accordingly, if a Shi'ite revolution for example overthrew

Saddam (hypothetically), it would have been difficult to force victorious clerical leaders to accept any kind of power sharing and open competition with secular or Sunni elites. With the American occupation, no force would be in a position presumably where its militants would accept only the solutions their own side imposes.

At the same time, in the case of external imposition there would be problems with the legitimacy of a new, transitional order even graver than in the case of indigenous revolutions. The latter are best understood, following Arendt, as having two moments in time, liberation and revolutionary construction.¹⁰ Between the two, when the old law is dead and the new has not been created lies a political-legal vacuum that no revolutionary regime change can avoid. Thus what Carl Schmitt called *sovereign dictatorship*, implying the need for a provisional government that exercises arbitrary authority, without the constraints of the rule of law or the separation of powers is inevitable even in a democratic revolution until a new constitution is drafted, ratified and enacted. Sovereign dictatorship has a very high need for self-legitimation; in modern, democratic times it can be exercised only in the name of the people. But who are the Iraqi people? Although Bush, Blair and Rumsfeld habitually refer to such an entity, strictly speaking who the Iraqi people are cannot be legally defined before the institutionalization of a democratic process. For now there are only Kurds, Shi'ites, Sunni and others, both secular and religious, especially as the state that has held them together in some kind of Iraqi nationality has been smashed.

In indigenous revolutions, a part of the people that plays a heroic and self-sacrificing role in the work of liberation has at least a claim to represent the people and their interests, before they can express themselves through democratic channels. The reason why new elites in control of provisional governments, inevitable components of revolutionary transformations, can be accepted as legitimate for a relatively short period is because they have participated in the work of liberating the country from a (generally) hated old regime. In the case of the model of external imposition, however, it is almost impossible to distinguish liberation from occupation. After a lost war, unless a country is freed from an external occupier or its obvious puppets, the liberators will be occupiers to some and probably to most if they stay long enough to do any good, to really help stabilize and frame the political competition. Any interim government they

will sponsor, with no political credit of its own, will suffer from this legitimacy problem, and the inevitable role of such government in shaping more permanent arrangements will be the reason for extra-critical scrutiny and suspicion. The occupying power, the Americans, can claim that they will let the Iraqi people gain control over the process of democratization, but they must first identify who the people is and who are its plausible representatives. If any important group is excluded, it gains the mantle of representing large groups of the population against the occupiers and their appointees. Thus, they may find it easier to speak in the name of the people than those who represent most immediately the occupiers. This could happen in Iraq in the case of the most radical Shi'ite clerics as well as some segments of the old state administration. Even a high level of pluralism in the construction of a provisional government cannot solve the problem, because those who participate, if they have a mass bases like the Shi'a clerics may not be able to manage their relationship with their base, and more radical rivals in its leadership.

The issue of the administrative elite associated with the Baath is quite different, but equally serious. As Linz and Stepan notice [63] destroying the party in a one-party state where its fused with the administration, incapacitates the state, and opens it up to opportunistic, clientilistic but amateur groups who cannot solve problems of coordination and efficiency. This has already happened in Iraq, probably along with the great alienation of the Sunni middle and professional strata also tied up with the Baath and the state bureaucracy. The alternative however, namely restricting deBaathification to the top only, which the Americans have also tried, if selectively, is incompatible with the revolutionary ideology of both the returning exiles and the radical Shi'ite clergy that the Pentagon ideologists were unwise enough to give strong encouragement on this score.¹¹ Radically pursuing this strategy on the other hand will mean not only the continued disorganization of the state, but also the exclusion of the relatively secular Sunni statist and professional middle strata from politics. It may be that this road will help legitimate the imposed revolution in the eyes of the previously excluded, inevitably the majority. But it may have two disastrous consequences: a dramatic drop in the efficiency of an administration and services, and the long term exacerbation of Sunni-Shi'ite conflicts.

German and Japanese Comparisons

If the legitimation problems of an externally imposed revolution do not seem entirely insoluble, this may be because of the historical precedents of Germany and Japan, where they were handled in two significantly different ways. External imposition indeed could be seen as two very different things: imposing a full democratic solution from the outside, or merely removing impediments in the way of genuinely internal solutions. According to Carl J. Friedrich, the process of democratization of Germany, in reality the restoration of democracy, can be understood as the second of these types.¹² In the words of the best American historian of this process: "German political life reached 'point zero' in May 1945. But there were still latent political traditions of pre-Hitler Germany on which a reconstruction of the body politic could fall back. There were also scores of political and intellectual leaders and thousands of faithful followers who had somehow weathered the totalitarian storm and were rallying now to rebuild society and state."¹³

It may be therefore more fitting to choose the Japanese example as a lesson for Iraq, because here the work of imposition was much more drastic and democracy at least more obviously created than merely restored.¹⁴ Note however that in Japan, radical rupture was avoided to a far greater extent than in Germany. The Americans made a determined attempt not to smash the Japanese state in its internal capacity. The Japanese cabinet and Diet were not removed, but instead they now had to follow the directives of the American military, rather than their variously dominant military groupings as in the years 1930–1945.¹⁵ Most importantly, Gen. McArthur was strongly sympathetic to the Japanese government's desire to allow the emperor representing the unity of the state to remain in place. The retention of the emperor was key to maintaining the coherence and loyalty of the police and the bureaucracy. Finally, even in the midst of imposition, the important *fiction* of legal continuity was maintained.¹⁶ The new constitution of 1947 was formally passed as a mere amendment of the 1889 Meiji constitution.¹⁷

Thus the problem of legitimation in Germany was handled through the restoration of democracy through reliance of largely indigenous processes, whereas in Japan, where democratization was imposed, the solution relied on the preservation of the inherited state along

with a species of traditional legitimacy. This difference should not hide the fact that the initial conditions of political transformation in Japan and Germany in 1945 were far closer together than the givens of either could be in contemporary Iraq:

1. Germany and Japan were under an externally overthrown dictatorship for 12 and 15 years, respectively; Iraq for 40 years or more.
2. Germany and Japan were constitutional regimes before the 1930s; what occurred after 1945 was first and foremost a restoration of constitutional regimes. Iraq has never known constitutional, rule of law government. The skills, traditions, memories, and institutions and most of all the professionals to build a constitutional state were available in both Germany and Japan, but not in Iraq.
3. Germany and Japan are ethnically homogeneous. Japan is also religiously homogenous, while violent Catholic and Protestant conflicts were over in Germany in the 17th century. The ethnic and religious situation in Iraq is obviously different, to say the very least. Here the ascriptive cleavage structure is three-dimensional and highly antagonistic (Arab-Kurd; Shi'ite-Sunni; secular-religious, with 6 out of 8 of the possible groupings realized!)
4. German and Japanese elites and the Western, mainly American agents of democratization had a common enemy, whose support was relatively weak within their countries: the Soviet Union. Iraqi elites, in common with other Arab/Muslim leaders and opinion makers have a major enemy that is the friend of the United States: Israel.
5. Finally, the external boundaries of Japan were entirely secure, those of Germany could be threatened only by a new World War. The boundaries of Iraq on the other hand are porous, and are threatened by a plurality of states that have important internal allies. Iraqi democracy is a threat to all of these states, some of them allies of the U.S. and therefore difficult to restrain by threats of force.

Partition or Historic Compromise?

Evidently, democratization in Iraq has a much more unfavorable “zero point” [*Stunde Null*] than did revolutionary imposition in Germany or Japan. It will also be much more difficult to imitate the work of the generals Lucius Clay and Douglas McArthur, who in any case relied on whole staffs of leftist experts interested in what is now rejected by the Bush team as “nation-building,” namely the establishment of a new, state based framework of social solidarity and identification. Not interested in nation or state building, they nevertheless gave themselves a great deal to do in this area. Unlike their forerunners in Japan, the Americans in Iraq entirely smashed not only the Baath government but the existing state as well, putting its whole administration under severe threat. They did not, or could not seek out any institution like the Japanese emperor, government, Diet, police or administration that would contribute to the cohesion or the work of a state, namely keeping order and maintaining the established framework of everyday life within the territory. In Germany too, there was little or no institutional continuity of the central state, but there both the Americans and the British restored or created viable provincial (Länder) governments extremely early. Bavaria, for example, already had a prime minister in late May, a few weeks after the surrender.¹⁸ When the time for rebuilding central institutions came, that effort could rest on established provincial governments, administrations and, after the election of constituent assemblies, constitutions. None of this could have happened without the long standing patterns, practices as well as surviving staffs and leaders of effective local government.

While Iraq is in no way comparable to Germany with respect to such givens, there are nevertheless three places where the Americans could look for at least some analogous resources: the Kurds with their experience of a quasi-independent region, the lower and provincial levels of the Baath state administration and the Shi’a clerics who are now showing a surprising capacity to administer cities and villages, more effectively in fact than the occupiers. Unlike the German case, however, these forces of potential organization from the bottom up represent three separate and mutually antagonistic ethnic-religious groups. There are two imaginable ways of forcing them to co-operate: the quasi-partitioning of the Iraqi state among them, or

enabling them to enter into a difficult but not impossible historical compromise. The project of full autonomization may in fact resemble the German pattern, with three military powers the Americans, the British and the Poles(!) playing the central role. Right now there is loose talk in Washington of the United Kingdom holding Basra and the South, the Americans continuing to occupy Baghdad and the center, with a Polish led international force presumably "occupying," or "protecting" the North including Kurdish territories. Good luck to the latter when the Turkish Army comes across the border, as it certainly will if the project of partitioning Iraq is adopted.¹⁹

More seriously, it may be impossible to find an autonomy formula that will simultaneously satisfy the needs of the Kurds if the Iraqi state proves unviable, and the Turkish government and military command that will insist on having an important say in the matter.

While more difficult internally, enabling the three forces to negotiate the formation of a broad based provisional government, along with forms of reduced but still real local autonomy, and a constituent process based on consensus and compromise should have been more promising. Such a path would have grafted a negotiated or coordinated transition onto the externally imposed revolutionary model, doing only without a legal continuity that in any case would not be much missed in a society unused to the rule of law. The option would have had (or would have, if revived) four preconditions:

1. The first is negative: the U.S. would have to get out of the process of refereeing the negotiations after initiating them. There are several reasons for this. The occupation is unpopular to several major groups that would have to participate in a broad-based process. The presence of U.S. negotiators or even referees would be seen as a strong intervention in the process on behalf of unpopular outcomes: some kind of continuation of the occupation, special access to Iraqi oil, favorable outcomes to Israel etc. Moreover the U.S. has already shown too great a preference for external exiles, and in particular the INC of Chalabi and Makiya, and thus it could not count as a mere referee in an Iraqi process. In fact it has been made clear by very knowledgeable analysts like Brent Scowcroft²⁰ that the U.S. did not fight the war for democracy to hand over power to its enemies whose victory would have to be quite imaginable in an open competi-

tive election. Thus the democratic intentions of the U.S. would remain in doubt. The negotiating posture of the Bush government recently at the Security Council, where mere legitimation was sought for a determined outcome has certainly not escaped the attention of Iraqi actors. Thus, for a genuine negotiated process of transition to democracy supervision by the U.N., its Secretariat or another plausible international agency would be mandatory.

2. Since legal continuity is already broken, the establishment of the rule of law is even more important.²¹ This means first of all the avoidance of arbitrary acts (arrests, open ended interrogation, shootings, public humiliation, trials without due process etc.) by the occupation authorities themselves. This is a difficult task for an occupation regime that is formally a military dictatorship especially while there is still fighting—but important steps can be taken by establishing military and/or international courts with due process, forms of oversight as well as disciplining those responsible for obviously arbitrary acts. Given the problem of the Baath, a general amnesty would have to be declared for those who have no obvious criminal responsibility under international law. (This could be linked to a truth and reconciliation process.) For political actors to be able to participate in an uncertain, open-ended political trial of democracy their personal fate would have to be made secure. Elections leading to democratic stability can only be held if party workers, publicists and voters do not fear repression and retaliation. Granted, given the general availability of arms a non-violent political process is hard to imagine, but at least participants should not have to fear arrests, interrogations and kangaroo trials at the hands of the occupying authority or transitional government.
3. Political participation in the negotiations of all groups with sufficient following that accept democracy as a second best would have to be guaranteed. Attitude toward the United States or Iraqi exiles it sponsors, or even to the past, need not be decisive as long as parties publicly and convincingly indicate their strong willingness to desist from trying to impose a non-democratic outcome, and to accept the rules of the game that come out of negotiations.

4. Finally, there is a need to either involve representatives of key neighboring states (Turkey, Iran, Syria, Jordan and Saudi Arabia) in negotiating sessions dealing with the structure of the Iraqi state, or to organize a separate conference with their participation concerning this question which is of vital interest to them. Eventually, the Security Council of the U.N. would have to produce a binding agreement, with sanctions concerning the boundaries of Iraq and its components.

Different formulas could actualize or combine these four desiderata. But it is the principles involved that are important: internationalization, self-determination, legality and consensus. Moreover, it is pretty obvious that the United States could have only benefited from stepping aside and thereby sponsoring a process of internationally monitored negotiated transition. The principle goal of the invasion, now that there are apparently no WMDs is already being redefined as a united but democratic Iraq. The chances of failure in both these areas can be minimized as long as the consensus requirements for an agreement are not set too high. Equally important: all charges of imperial interests could have been refuted by adopting this model, and the U.N. could have been used to retroactively justify the military enterprise the Security Council did not approve.²² Granted, that latter act of co-optation would have a price that Russians and the French would exact, but that would have to be paid “only” by some interested U.S. companies who would contracts and profit opportunities. Thus it is difficult to justify or even explain why the U.S. is so against this type of model.

Evidently, however, part of the U.S. government has directed its strategic plans as much against the U.N. as Iraq itself. Otherwise it is hard to believe why a compromise proposal, variously offered by Chile, Mexico and Canada, was not adopted by the Americans (Blair’s government seemed to tempted) during the last weeks of the Security Council debate. Not only a “moral majority” (i.e., 9 or more votes) of the 15 member Council could have been thereby attained, but perhaps the French or Russian veto could have been avoided after all. It seems clear in retrospect that Security Council support would have meant, as in Afghanistan, the right to participate in the political transition of Iraq, and it is likely that the Pentagon wing of the U.S. government (that never wanted to go the U.N. in the first

place) was already thinking of avoiding that option. So the idea of U.N. supervision or even serious participation in the political transition cannot be permitted to surface now, and even Tony Blair had to be set right when he entertained some undetermined version of the idea.

But why not then forget my first precondition and sponsor a fully inclusive, autonomous, negotiated process under American supervision, one that could still perhaps work if they could get the radical Shi'ite clergy, as well as the Kurds to sit down with elements of the old state administration? The answer seems to be that they oppose such a process precisely because of its virtues. The U.S. government must fear just as much as Scowcroft that democracy could mean the election of forces hostile to the United States. But they cannot follow his suggestion that democracy be postponed indefinitely, now that the democratization of Iraq has become the only justification for the war, for the violation of international law and diplomatic break with important allies. What they therefore need and want is a democracy that turns out right, a contradiction in theory because democracy by definition implies uncertainty of outcomes,²³ but empirically possible to the extent the entire process, as well as the resulting constitutional-electoral regime can be managed.

This still leaves the question of rule of law, but the answer seems pretty obvious. The deBaathification that the exile groups continually speak about, that can only create legal uncertainty and turmoil for some time, has not only become part of the ideology of the American planners who thereby confirm themselves to the analogy of the Iraqi regime change to previous and successful transitions to democracy (deNazification in Germany, demilitarization in Japan and, supposedly but wrongly, deCommunization in East Central Europe²⁴), but it is also a carrot uniting the Shi'ite movement with its hatred for the Baath and its bevy of office seekers and ideologically-oriented exiles around Chalabi. To the extent that the Shia clerics cannot be allowed to rule Iraq, it may be thus possible to compensate them on lower levels of power and influence, or at least so the Americans and Chalabi's group must hope.

Confusion Reigns: Provisional Government and Constitution Making

Thus, revolutionary imposition will not be combined with, or its problems mitigated by, a consensual, rule of law-framed process of broad-based negotiations. The problem, however, remains that of devising a process that appears pluralistic without being excessively so, one that leads to sufficiently democratic elections without producing an outcome deemed unfavorable by U.S. policy makers. At present all we are witnessing is confusion and changing signals, that may mean serious conflicts between the U.S. and its closest Iraqi partners, between the State Department and the Pentagon, and among the Iraqi groups whose participation seems necessary in one or another formula for transitional arrangements.

First, there is the issue concerning type of state. The Kurds of course, who cannot rule Iraq as a whole want as little as possible of a rule of any central state over Kurdish territory: thus their aim is a confederation of three “states” or “regions” if independence is not possible. They are opposed not only by Turkey, but probably also Chalabi, whose secular Shi’ite associates could not gain control over any of three possible territorial entities, except perhaps the central Sunni-Arab region where they would have to forever rule by force of arms. The Americans oscillate between the two sides, depending on the day and on whoever happens to speak for the government on a given occasion.

Second, there is a question of who appoints the provisional or interim government. First, it seemed General Jay Garner would do so, then a meeting of the Iraqi opposition announced that a conference would be held in Baghdad to generate it, then Garner again announced that he would do so, and that probably five or six leaders of the external opposition and Kurds would be the members along with two or three others. Finally, (*NY Times*, May 5, 2003) opposition groups announced that first a “national assembly” of 350 “delegates” (1/3 exiles and Kurds, whose leaders would pick the other 2/3 from inside Iraq) would meet in late May, and it would be this body that would name either “an interim executive council or prime minister.” At the same time Garner seems to be still speaking of picking an interim “nucleus” that “doesn’t have to be perfect, all it has to be is representative” according to another American official. What seems

to be going on is that Americans are loath to leave outcomes to chance even if the cost would be illegitimacy (i.e., imperfection), while those within the Iraqi side who care more about legitimacy would like the outcome to be produced by some kind of process that can be represented as democratic (hence the preference for a “conference” or a “national assembly.”)

By the time this article appears, a provisional government, picked somehow or other is likely to be in place. Whether it lasts is another question. The original ambiguity will re-appear in relationship to the process that would produce a constitution. Secretary Rumsfeld who referred to this theme very early, seemed to imply that it would be entirely unproblematic for an interim government to produce a draft, that would be perhaps ratified in referendum. It is of course likely that the American government, or separately the State Department and the Pentagon already have drafts they wish to introduce, or perhaps impose. To any Iraqi however, with the aspiration for some significant support, the constituent process must preserve the appearance of independence and genuine participation. Thus, very quickly Chalabi countered with a more traditional constituent assembly formula. What remained unclear in his statement on this subject was whether such an assembly would be elected, and if so how, or a method of delegation by hand-picked instances would be used. Perhaps the national assembly that would pick the provisional government would also double as a constituent assembly, the classical revolutionary-democratic formula except for the fact that the members would not be democratically elected. Even if there were elections everything would depend on the electoral rules, the legal conditions of the campaign, access to the media, all of which could be arranged in such a way as to either exclude important actors or to minimize their chances. It thus may be possible to elect a bare pro-American majority who could, with suitable majoritarian decision rules shape the constitution. But again competitive elections or even large assemblies involve risks concerning outcomes, that a small hand-picked committee or single leader would not. The challenge is to minimize the risk, and yet maintain democratic appearances.

We can expect further confusion, ultimately a function of trying to square the circle: to have a democracy sufficiently democratic to justify the war, and to have that democracy produce a determined outcome, however that will be understood by American officials in

charge. If they could overcome their own internal disagreements the project would not be impossible, unless another actor emerges that is capable of challenging and convincingly denouncing it as undemocratic. Whether that has already happened with the appearance of Shi'ite mobilization is too early to tell. But not having constructed a viable process before that mobilization, the Americans may not be able to contain it whatever choices they now make.

Civil Society vs. Empire?

The absence of a democratic or even rule of law tradition may not be fatal for democratic transition if civil society organizations can prepare a society for participation and self-government during the period of dictatorship. Such organizations could make it possible for a constituent power to be based on organized society and not the quicksand of isolated individuals. (Arendt) It is a commonplace however that under totalitarian domination, forms of local autonomy, civil associations, publics, or even networks cannot develop. Accordingly, the revolutions that abolish such a dictatorship themselves have a propensity to turn dictatorial. In light of the recent Shi'ite mobilization, under which I understand not only demonstrations and cultic events, but also the impressive grass roots religious organization of communities like Najaf and Karbala and their infrastructure, one must come to one of two possible conclusions. Either the Saddam regime was only incompletely totalitarian or that under conditions of a perceived neo-colonial occupation a tradition like that of the Shi'a can be very quickly revived and reorganized even after extreme suppression. Probably both statements have some truth in them.

The idea was anticipated only by leaders of the Supreme Council of the Islamic Revolution who maintained before, during, and after the American invasion that Iraqis could free themselves from Saddam if they received the right kind of significant, but non-intrusive international support. That self-assessment may have been too optimistic as far as Saddam's regime is concerned, but may very well turn out to be more true for the occupation regime. In theory the Americans have much greater resources to crush an independent movement than even Saddam, but whereas the latter needed to obey no limits when repressing social independence, the Americans are

not in the same situation. Having fought a war supposedly for "Iraqi Freedom," they are in poor position to suppress manifestations of that freedom. At the same time it is difficult for them to continue portraying the mere existence of an anti American movement as somehow proof of American success, justifying the occupation. They must be conscious of the fact that when there is no serious repression the dynamic of mobilization will bring an increasing number of increasingly politicized people into the process. The longer the occupation lasts moreover, and the longer projected timetables for withdrawal the more anti-American the movement is likely to become.

Aside from harsh and extensive repression that seems implausible, there are two strategies that can be used with respect to the Shi'ite movement: co-optation and fragmentation. The first would mean making a deal with a moderate clerical leadership, notably the leaders of the Supreme Council that are nominally members of the Iraqi National Congress led by Ahmad Chalabi, although they boycotted and demonstrated against some of the assemblies organized to promote the leading role of that organization. For a man like Ayatollah Muhammad Bakr al-Hakim, that prospect is dangerous now that mobilization is taking place, since if he, his brother and their associates gave their co-operation too readily or cheaply they could be challenged and replaced by more radical and more anti-American leaders like the young and charismatic Moqtadah al-Sadr, bearing the famous name of a martyred father.²⁵ It is hard to believe that in a seven-to-nine-person interim government, for example, Hakim could accept anything less than leadership—or a structure of decision making that would allow him to veto any decision. Unlike Chalabi, he has a serious militia (the Badr brigade) and large following not only in the south but potentially the capital, where at the moment al-Sadr is the main force in Sadr City. Unlike the Kurds, Hakim's potential electorate could produce a majority. Thus co-opting this particular Shi'a leadership may not be possible unless the Americans are prepared to cede power to it, and experimenting with another moderate group like that of Ayatollah al-Sistani (who is reputed to have co-operated with the Baath regime) may not do any good, given the strength and organizational head start of the Supreme Council.

But let us assume I am wrong, and Hakim does join a provisional government as a member without veto rights and gets away with it

within the Shi'ite movement. Since he is well organized and supported, it would be in his interest to have an *elected* constituent assembly as early as possible. Weaker American supported elements, led by say a Chalabi or a Makiya or whoever would be interested in a *pre-arranged* constituent assembly and subsequent elections, as late as possible. But provisional governments can be justified only if they are really provisional, and that means relatively short term. With the U.N. in charge as in Afghanistan, it would have been easier to justify the longer period probably needed to prepare the conditions for genuinely free elections. Now that option seems to be gone. With the U.S. in command, and especially if American supported elements with little following in Iraq dominate, the tenure of any provisional government would have to be especially short. Whether in or out of such a government, unless he himself leads it, Hakim will be in an especially strong position therefore to denounce all delays of a free election, as well as the imposition of a constitution by an unelected body. And if he does not, al-Sadr may be quite ready to play the role of Lenin. Chalabi should recall Kerensky's fate (and Hakim those of the more radical social revolutionaries) before embarking upon any such path.

Fragmenting the Shi'ites may be in fact a better strategy from the American point of view, as this is already happening spontaneously. There seem to be divisions concerning the relationship of religion and politics, the model of a future Islamic republic, as well as the related issues of Iranian alliance, whether this should be pursued, and if so, which Iranian faction, the hardliners or the reformers, should be sought as allies. There may be disagreement too concerning the goal of fully controlling their part of Iraq, or somehow sharing in the control over the whole. In an ideal world from the point of view of Americans, one that the right electoral law could promote, the Shi'a could produce four or five competing religious parties. In a presidential election for example organized as a first past the post, one round contest these all could lose to an American and Kurd-supported Arab presidential candidate whose power could be suitably enhanced by the right constitution. It is some such solution the Americans must dream of if they are to have internationally monitored democratic elections at all. But the Shi'a too would have to be asleep at several, indeed, almost all stages of the process for this divide-and-conquer strategy to work.

Uniting against the occupation and their hand-picked interim government before, during, or even after a projected free election would guarantee that the Americans could not do the two things that they wish to combine: having free elections and guaranteeing the outcome they want and need. With the right strategy in other words, the Shi'ite clergy simply has too many potential voters to lose. Does that mean they can win? It depends on what they wish to accomplish.

The Shi'ite civil society in formation is by, its nature, anti-occupation. Assuming that the Americans really were only what they claim, namely selfless liberators who wish for no advantages for themselves in Iraq, they nevertheless represent by their very presence the humiliation of a society that could not free itself from an oppressive, minority-based dictatorship. But of course they are not perceived as selfless or disinterested or even particularly competent in the business of running an Islamic country. The anti-occupation movement is thus for self-determination but not necessarily or primarily in the name of any democracy. People are mobilized rather on behalf of their various understandings of the Islamic faith and/or the Iraqi nation, and democracy represents most likely a distant third goal, relevant at best to minority. Had they been drawn into a legitimate democratic process, under international supervision, many of the leaders could have become interested in democratization as a second best to their own domination, which the process did not allow. Now it is hard to imagine a scenario according to which the same thing can happen. Before the American occupation is defeated there may be mass confrontations and possibly civil war between a provisional government and the popular forces. None of that is a good school for democracy. If the American proxies win an inevitably temporary victory, there may be an ongoing low intensity, asymmetric struggle against them with the danger of drawing in other countries, above all Iran. It is hard to see how a new dictatorship can then be avoided, in this scenario of the Vietnamization of Iraq. But if the Americans are forced to withdraw and the Shi'ites win, they themselves may fall under the illusion of being able to control the whole country, since after all Saddam could do this with a narrower base in the population. That road will be another to dictatorship, of a different type, admittedly.

The historical compromise the Americans could have sponsored but did not remains the only plausible road from all types of dicta-

torship. Its parameters would still be the same in this society of explosive cleavages even if it is the anti-colonial movement that is in the driver's seat: international supervision, consensus and legal security. It will be possible only if the occupying power is forced to abandon the project of an imposed revolution. But it will depend on the internal development of the anti-occupation movement, and the advice and alliances that support it from the outside whether the end of the occupation is a road to new dictatorships, coups and civil wars or to a process of historical understanding and at least partial democratization and rule of law. We on the outside should not raise the standards for a positive process too high. Given its external connections, the Shi'ite movement is not likely to identify with a social model too different than that of at least one of the important factions of the Islamic Republic in Iran. An Islamic republic based on popular sovereignty, legal equality and local autonomy, rather than religious guardianship and the suppression of women and minorities may be the best that can come out of the Saddam dictatorship, its violent end in an illegal war and an occupation regime that chose the option of an imposed revolution.

Notes

1 Nehal Bhuta, "A Global State of Exception? The United States and World Order," forthcoming in *Constellations* (September 2003).

2 Anne-Marie Slaughter, "Good Reasons for Going Around the U.N.," *NY Times* (March 18). Her argument is normative-theoretically fallacious in my view, since even given the open and processual nature of international law, the outright illegal cannot be simply dubbed legitimate, unless a de-ontological principle of legitimacy like international public opinion, or the moral majority (the 9 members of the Security Council) supported an action that was stopped by a veto or veto threat alone, as in the Kosovo case she cites. Moreover, the illegal but legitimate should be able to become a principle of a new and better legality, and it is hard to see how the actions of the U.S. vis à vis the Security Council and the U.N. Charter could yield that. According to Slaughter, if weapons of mass destruction were found, and/or the Iraqi people welcomed the Americans and their allies, and if the U.S. turns "immediately back to the U.N." for after the fact approval and to help rebuild Iraq, and the U.N. agreed, the invasion would become legitimate. It is hard to think that she is speaking as a lawyer, and not as a sociologist to whom legitimacy is only belief in a claim of validation or justification. Even then her first two conditions have not been satisfied: WMDs have not been found, the Iraqis on the whole did not welcome the invaders. As far as the most "important" point is concerned, the U.S.

has now indeed gone back to the U.N. for approval, and for help in rebuilding Iraq, though the concessions in the political area (appointing a special U.N. coordinator with no specified powers) are more symbolic than real. For legitimacy in the sociological sense it is hard to believe that a Security Council resolution giving the Americans free hand in the political sphere which they in any case have will make much difference. On the other hand, it would be hard to deny that success in building a democratic Iraq, which is now central to the self-justification effort of the American government, would help to justify the invasion and occupation for a great many who are otherwise skeptical.

- 3 János Kis, "Between Reform and Revolution: Three Hypotheses about the nature of Regime Change," *Constellations* Vol. I No. 3 (January 1995), and "Between Reform and Revolution," *East European Politics and Society* (Spring 1998).
- 4 See *NY Times* (May 9, 2003) on the draft resolution introduced by the U.S., the UK and Spain. It is to be very much hoped that this resolution, quite humiliating to the countries (France, Germany and Russia) that sought significant U.N. participation in the political transition, is defeated or vetoed, but the *Times* report suggests that it will pass.
- 5 János Kis, "Between Reform and Revolution: Three Hypotheses about the nature of Regime Change" and "Between Reform and Revolution." I expanded the scheme by identifying continuity of legitimacy cum legal rupture as *autogolpe*, i.e. coup or revolution carried out by a legitimate authority in place.
- 6 J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation* (Baltimore, 1996), pp. 55ff.
- 7 A. Przeworski *Democracy and the Market* (Cambridge: Cambridge University Press, 1991) pp. 56–57.
- 8 Linz and Stepan op.cit. pp. 57, 73. The Romanian case however shows that revolutionary change under some circumstances can lead to a polyarchy.
- 9 A similar category, artificial revolution, was introduced by some analysts dealing with post-war Germany and Japan. See: J. D. Montgomery, *Forced to Be Free. The Artificial Revolution in Germany and Japan* (Chicago, 1957). See especially the introduction.
- 10 H. Arendt, *On Revolution* (New York: Viking Press, 1965).
- 11 In fact, deBaathification seems to be more strongly represented at the Pentagon and in Washington, than at the State Department and among American officials in Baghdad faced with the immediate consequences of state disintegration. The result is however confusion and conflict. A clear and openly stated policy would have helped, but now mixed signals have been given to Iraqi actors who have already begun to battle over important positions.
- 12 C. J. Friedrich, "Military Government and Democratization," in C. J. Friedrich and associates *American Experiences in Military Government in World War II* (New York: Rinehart, 1948), pp. 11–15.
- 13 P. Merkl, *The Origin of the West German Republic* (New York: Oxford University Press, 1963), p. 20.
- 14 See especially K. Takayanagi, "Some Reminiscences of Japan's Commission of the Constitution," in D. F. Henderson, ed., *The Constitution of Japan. Its First Twenty Years, 1947–1967* (Seattle: University of Washington Press, 1968). Dr. Ta-

kayanagi, an important participant with a “collaborative theory” nevertheless writes: “All legislation for the democratization of Japan during the occupation was guided and supervised by the SCAP [Supreme Commander for the Allied Powers]. No legislation was enacted by the ‘free will of the Japanese’ in the sense that the enactment was accomplished ‘without any outside interference.’” (p. 77) Other interpreters believe the level of compulsion used was much more drastic, and few apparently share Takayanagi’s judgement that the new constitution was “a rather moderate revision of the Meiji constitution on democratic lines.” Even a cursory reading of the two texts as well Takayanagi’s own comparison refutes this claim.

- 15 On this see W. G. Beasley, *The Rise of Modern Japan* (New York: St. Martin’s Press, 1990), pp. 177ff.; Karel van Wolferen *The Enigma of Japanese Power* (New York: Alfred A. Knopf, 1989), pp. 39–41.
- 16 On such fictions, see A. Arato *Civil Society, Constitution and Legitimacy* (Lanham, MD: Rowman and Littlefield, 2000), pp. 143–145; 174–175.
- 17 J. Maki, “The Japanese Constitutional Style,” in *The Constitution of Japan. Its First Twenty Years* pp. 8–10; Takayanagi *op. cit.* p. 79; as well as A. Bouterse *et.al.*, “American Military Government Experience in Japan,” in *American Experiences in Military Government* pp. 350–351.
- 18 Friedrich, “Organizational Evolution in Germany, 1945–1947,” in *American Experiences* pp. 205–209; Merkl, *op. cit.* pp. 8–14 and elsewhere.
- 19 These men of the new Europe will need Jan Sobieski or his ghost to protect them! But as against the siege of Vienna, at least there are no Hungarians among them, because after allowing the training of Chalabi’s *Freikorps* at Taszár, that country had enough of direct involvement in Iraqi regime change.
- 20 W. Gibbs, “Scowcroft Urges Wider Role for the U.N. in Postwar Iraq,” *NY Times* (April 9 2003).
- 21 Friedrich, “Military Government and Democratization,” pp. 8–11; United State Institute of Peace, Special Report No. 104 “Establishing the Rule of Law in Iraq” (April 2003).
- 22 It may be that such paper-thin justification will be now provided anyway by passing a new Security Council resolution sponsored by the U.S. and its allies. This type of resolution is certainly what Habermas feared, but it is hard to believe that it is the “legitimacy” Anne-Marie Slaughter hoped for.
- 23 Przeworski, *op. cit.* pp. 10ff.
- 24 The failure of deCommunization (that I in any case opposed) is indicated by the fact that the Polish government of the high former apparatus members President Kwasniewski and Prime Minister Miller may be asked to play a major role in policing post-war Iraq.
- 25 See Peter Maass, “Back-Room Theocrat,” *NY Times Magazine* (May 12, 2003).

“1989”
For János Kis

TIMOTHY GARTON ASH

What more do we now know? Above all, we know more about the consequences. 1989 had results that could place it beside 1789 as a date in world history. Not only was it the beginning of a swift and fundamental change of system in the countries of Central Europe. It was also the end of the Cold War, which had started in the 1940s over these same countries. This alone meant that it directly affected many other regions of the world, such as southern Africa, south east Asia and central America, whose politics had been deformed by the global competition between the Soviet Union and the United States, capitalism and communism, “East” and “West.” In fact, it is difficult to find a country in the world that was untouched by the end of the Cold War.

Moreover, what happened in Central Europe in 1989 hastened the end of the Soviet Union. Just a few months later, the Baltic states declared their independence. In Central Europe, Gorbachev and his colleagues had been robbed of the precious illusion that '89 could be a happier replay of '68, with reformist leaderships building “socialism with a human face” in Prague, Berlin, Warsaw and Budapest. Now they were swiftly deprived of another illusion: that the “Sinatra Doctrine” enunciated by Genady Gerassimov (“you do it your way”) could be applied to the Soviet external empire but denied to the internal one. Where the Baltic states led, the republics of the Transcaucasus, Ukraine and, most important, Russia under Boris Yeltsin would follow.

The connection of the velvet revolutions to the collapse of Europe's other communist multi-ethnic federation, Yugoslavia, is less direct. Here, Slobodan Milosevic was stripping Kosovo of its autonomy even as the Poles gathered at their Round Table. The destruc-

tion of Tito's country had its own fearsome internal dynamic. Yet the end of communism in Central Europe certainly precipitated the end of the party that had held Yugoslavia together. The Yugoslav League of Communists was effectively dissolved at its Fourteenth Special Congress in January 1990. It is hard to imagine the subsequent bloody dismemberment of Yugoslavia unfolding in the same way if there had still been a global competition between East and West.

1989 also caused, throughout the world, a profound crisis of identity on what had been known since the French revolution of 1789 as "the left." It prompted many to ask the question pithily formulated by the political philosopher Steven Lukes: "What's left?" What's left of the left, that is, if there is no more utopian project? There have been some interesting ironies in the ensuing debate.

Take the "third way," for example. It was the illusions of Gorbachev and his team about the possibilities of a "third way" between old-style communism and capitalism that made the revolutions in Central Europe possible. The leaders of those revolutions insisted, by contrast, that there is no such "third way." Coming to power they immediately reached for the existing Western models of a free market economy, democracy and the rule of law. Yet in 1999, world leaders of the center-left, including the American president Bill Clinton, the British prime minister Tony Blair, the German chancellor Gerhard Schröder and the Italian prime minister Massimo d'Alema (a former communist), came together at an extraordinary meeting in Washington to celebrate their new ideology. And what did they call it? "The third way." By this they meant, however, only a more socially-minded version of reformed capitalism.

Another irony is the way the end of Marxist regimes in Europe has contributed to a revival of Marxist analysis. It is not just old Marxists who have pointed out that the raw, early capitalism of the post-communist world recalled that described by Karl Marx. In Poland's new private firms, for example, there were virtually no trades unions. The new entrepreneurs liked to negotiate individually with each employee—and the devil take the hindmost. As importantly, the relentless globalization of the world capitalist economy—to which the end of the Cold War certainly contributed—has made some of Marx's analytical insights (although not his solutions) seem more rather than less relevant. "In place of the old local and national seclusion and self-sufficiency," Marx and Engels wrote in *The Communist Mani-*

fest, "we have intercourse in every direction, universal interdependence of nations." Well, one hundred and fifty years later, we do; as the result of an anti-communist revolution.

If we know more about the consequences, we also know more about the causes. We already have most of the internal documents for which, in the case of the Russian revolution, we had to wait more than seventy years. Yet the passage of time produces its own peculiar distortions. One thing that happened rather quickly in the early 1990s was that history was rewritten—not in the deliberate, Orwellian way of Communist states, but through the much more subtle, spontaneous and potent workings of human memory. Suddenly, Western politicians "remembered" how they had all along predicted the end of Communism. Suddenly, almost everyone in the East had been some sort of a dissident. The ranks of the opposition grew miraculously after the event. Former communist leaders also produced remarkable memories. Thus, in conversations after German unification, both the former Soviet foreign minister, Eduard Shevardnadze, and Aleksander Yakovlev, a key Gorbachev adviser, told me that they had anticipated it as early as the mid 1980s. Was there a record of that? Well no, you see, they could not have said this out loud, not even to a small group of officials—because to do so might have shaken the whole fabric of Moscow's relations with Eastern Europe. (And the difficulty for the historian is that this is also true.)

Meanwhile, newly opened archives disgorged more evidence of the hidden weaknesses of the communist states. This was immediately added to the rapidly growing pile of reasons for believing that the Soviet Empire was bound to collapse when it did. A good example is the revelations about East Germany's soaring hard currency debt, which had been treated as top secret, and which it was barely able to service from month to month. It emerged that there was a louche Stasi colonel called Alexander Schalck-Golodkowski who was selling to the West everything that would move—old paintings, jewelry, guns—in a desperate attempt to pay next week's interest.

"Aha," politicians and journalists explained. "East Germany was bound to collapse in 1989 because it was bankrupt." Now these were interesting revelations. Knowing that they were up to their ears in debt to the capitalist West certainly would not have encouraged East German leaders to fight to defend their regime against the aspira-

tions of its own people. But so secret was the information that most East German leaders didn't know it either. They were victims of their own lies. In any case, states do not simply go bankrupt, like companies. In extremis, they default on their debts, as Latin American countries had done. Yet so long as the Soviet Union was prepared to use force to hang on to its East European empire, and so long as West Germany was prepared to go on lending more money in order to keep East Germany "stable," the bankrupt state could have continued.

You can always find more than sufficient causes for every great event—after the event. Certainly there were major structural causes of what happened in 1989. Not the least of these was the widening economic gap between East and West, a gap which detente policies did enable ordinary East Europeans to appreciate and resent. But we must beware what Henri Bergson called "the illusions of retrospective determinism." Interpretations which present the events and outcome of 1989 as inevitable are probably further from the truth than we were at the time, in our heady cloud of unknowing.

The truth is that 1989 could have turned bloody at any point, as China did on the very same day as the historic Polish elections described in this book. In Warsaw, we watched the first pictures from Tiananmen Square while waiting for the election results. "Tiananmen" was a word that I would hear muttered many times in Central and East European capitals over the next few months. What made the difference in Europe was two sets of political leaders: the opposition elites and the Gorbachev group in Moscow. 1989 was further proof of the vital importance of individuals in history.

I doubt that there are many factual revelations about 1989 still lurking in the archives. What remains is the unending battle of interpretations. 1989 has had its share of this over the last decade. It has been called "the end of history" by Francis Fukuyama but the return of history by his critics. The Yale political scientist Bruce Ackerman sees it as a test-case for "liberal revolution". The famous German sociologist Jürgen Habermas has described it as a *nachholende Revolution*, "a revolution of catching up." An American writer, George Weigel, has even celebrated it as "an embodiment of the final revolution," which, in case you were wondering, is "the human turn to the good, to the truly human— and ultimately to God." Others, including the distinguished historian of the French Revolu-

tion, François Furet, have argued that it was not really a revolution at all.

One claim that I made in the last chapter of my eyewitness account of the Central European revolutions of 1989 (published in the United States as *The Magic Lantern*) has been the subject of controversy. This is my assertion that the revolutionaries, or post-revolutionaries, brought to the new Europe of the 1990s "no fundamentally new ideas." (That was, incidentally, one of the reasons Furet gave for not considering it to be a proper revolution.) I have been challenged on this by old friends and participants in the revolutions, such as the Czech philosopher Martin Palous. However, they have not yet managed to reveal to me what major new idea about the arrangement of human society emerged from 1989. Instead, some of those things that were pointed to in the immediate aftermath as possible candidates for the title—for example, a new style of "forum" or "civic movement" politics, as opposed to old-style, Western party politics, with its sterile battles between left and right—soon disappeared, to be replaced by local versions of arrangements to be found already somewhere else in the world. These countries now all have conventional, Western-style party politics, although the composition and character of their political parties is, of course, unique. It is perhaps an irony that revolutions led by intellectuals should produce no new ideas—only new realities. At the time, we compared 1989 to 1848, but in this respect it was the opposite of 1848.

Yet perhaps this is to look in the wrong place. For the great new idea of this revolution was the revolution itself. It was not the "what" but the "how," not the end but the means. The new idea of 1989 was non-revolutionary revolution. In talking of these events, the word revolution has always to be qualified with an adjective—"peaceful," or "evolutionary," or "self-limiting," or "velvet"—because the leaders of the popular movements deliberately set out to do something different from the classic revolutionary model, as it developed from 1789, through 1917, right up to the Hungarian revolution of 1956. As was actually discussed at the time in the Magic Lantern theatre, an essential, constitutive part of earlier revolutions had been revolutionary violence. Here, there was a conscious effort to avoid it.

The motto of these revolutions might come from Lenin's great critic, the reformist socialist Eduard Bernstein: "the goal is nothing, the movement is everything." The fundamental insight underlying the

actions of the opposition elites, born of their own Central European learning process since 1945, but also of a deeper reflection on the history of revolution since 1789, was that you cannot separate ends from means. The methods you adopt determine the outcome you will achieve. You cannot lie your way through to the truth. As Adam Michnik memorably put it: those who start by storming Bastilles will end up building new Bastilles.

The 1989 model combines an absolute insistence on non-violence with the active, highly inventive use of mass civil disobedience, skilful appeals to Western media, public opinion and governments, and a readiness to negotiate and compromise with the power-holders, while refusing to be co-opted by them. It embraces occupation strikes and peaceful demonstrations, but also secret talks. The pressure of public protest is brought to bear, through an opposition elite, for the purpose of a peaceful transfer of power by dialogue and compromise. If the symbol of 1789 was the guillotine, that of 1989 is the round table.

This model may not have been imitated in its entirety elsewhere, but it has certainly had an impact. I was in South Africa a couple of years ago, and leaders from all sides confirmed that their own peaceful, negotiated transition was profoundly influenced by what happened in Europe in 1989. When I visited the Burmese opposition leader Aung San Suu Kyi in Rangoon in 2000, she told me she had closely studied the velvet revolutions—although at this writing she still looks in vain for her partner among those in power. Is it too fanciful to see an indirect influence of 1989 even in Northern Ireland?

In Central Europe itself, there has proved to be one major problem with the 1989 model. Just because the change was peaceful and negotiated, people have missed a sense of revolutionary catharsis. Moreover, a negotiated transfer of power requires compromise. There has to be something in it for those who are surrendering power. For many members of the former ruling class, the *nomenklatura*, in 1989, that “something” was the prospect of setting themselves up in private business, with the start-up capital coming from hastily privatized or, frankly, misappropriated state property. In this “privatization of the *nomenklatura*” they appeared to be trading political for economic power. But then the post-communist parties, with their nationwide activists and offices, and old and new funds, also proved

remarkably successful in the democratic competition for political power. The result has been a widespread sense of frustration. If you travel through Central Europe today, you will be told again and again by ordinary men and women that "the same people are still on top," that the communists have become the worst capitalists, that "more should have been done" to make a reckoning with the past.

Germany, Poland, Hungary and the Czech Republic have all wrestled with this problem of the past. The Germans tried a comprehensive reckoning: trials, purges after vetting, a parliamentary commission, the opening of the Stasi files. The Czechs tried a purge, politely called "lustration." The Poles initially wanted to let bygones be bygones, like Spain after Franco. The country's first non-communist prime minister, Tadeusz Mazowiecki, famously talked of drawing a "thick line" between the present and the past. But they found it didn't work. Issues of lustration and the opening of secret police files plagued Polish politics for a decade thereafter.

I have written about this problem extensively in my two most recent books, *The File* and *History of the Present*. Here, I would say just two things. First, the problem is unavoidable. It is intrinsic to the path chosen. Second, I believe, with benefit of hindsight, that all the countries of Central Europe could and should have tried the expedient of a truth commission—although without involving it in the quasi-judicial business of granting or refusing amnesty, as happened in South Africa. A truth commission brings both greater public knowledge of the misdeeds of the past and a formal, almost ceremonial acknowledgment to the victims. It symbolically draws a line under the past, without calling for forgetting or even, necessarily, forgiving. It is probably the closest a non-revolutionary revolution can come to revolutionary catharsis.

So if I were to be asked to note on a postcard the ingredients of the new model revolution, I would say: mass, peaceful civil disobedience, channeled by an opposition elite; attention and pressure from the outside world; a transition negotiated through compromises made at a round table; and then a truth commission.

Even without this last element, the revolutions in Warsaw, Budapest, Berlin, and Prague have, we can now say, succeeded. For all the popular frustration and widespread disappointment, the fears that many of us shared at the time have definitely not become a reality in the heartlands of Central Europe. At the same time, things much,

much worse than we imagined did happen elsewhere in post-communist Europe—above all, in former Yugoslavia. What has characterized the post-communist world has been this great divergence, so that the political distance between Prague and Pristina is now much greater than that between Paris and Prague.

In the whole spectrum of post-communist countries, Poland, Hungary, the former East Germany and the Czech Republic stand out as the only four who by the end of 1999, beyond any reasonable doubt, already made the transition to something approaching the Western normality of freedom, market economy, democracy and the rule of law. This was recognized by the fact they were all, by then, accepted as members of the North Atlantic Alliance of euratlantic democracies. Is it a coincidence that these were the only four to have what can properly be called velvet revolutions? (Bulgaria had a transition so velvet that it left the post-communists in power; Romania's was violent, but also left post-communists in power; Slovakia had to pass through the dark valley of Vladimir Meciar's semi-authoritarian regime before having its own belated "revolution of catching up" in 1998.)

Doesn't this prove that the opposition leaders were right in their fundamental insight that the means would determine the end? Of course you could argue that these countries only had these velvet revolutions because they had these elites, and they only had these elites because they had been, historically, closer to the West, with Western Christianity, early urban development, the rule of law, many elements of a modern civil society, and so on. So you could attribute their subsequent success rather to these deeper historical factors; to their geographical proximity to the West; and, indeed, to the fact that the West favored them politically and economically—inasmuch as it favored anybody—in its post-1989 policy.

Like all arguments about historical causation, this one can never be resolved with certainty. Nonetheless, I don't believe that the great givens of Geography and History predetermined the emergence of the extraordinary individuals whom it was my privilege to get to know in the 1980s—people like Václav Havel, Jens Reich, Adam Michnik and János Kis. Nor was it inevitable that they would adopt methods which, at least in this combination, had never been tried before. Nor, having adopted these methods, was it inevitable that they would succeed.

"All revolutions are failures," said Orwell. "But they are not all the same failure." This one was the exception. But that is because it was unlike all earlier revolutions.

Beyond Transition: The Variety of Post-Socialist Development

BÉLA GRESKOVITS

“The collapse of the Soviet system released immense energies in Hungary. Classical civil liberties became at a stroke recognized. The multiparty parliamentary system was born. Private property acquired dominance in the economy. No revolution could accomplish more within such short a period of time. We may talk about it in past tense now, because the epoch of the great transformations came to an end. The few years, during which political movements, national roundtable negotiations, and democratically elected governments still could shape the core of social relationships, passed. The playing field for collective action narrowed again. The transition is over.”

Kis, J. 1996: 4.

1. Introduction

The purpose of this essay is to develop a general hypothesis on the end of economic transition across post-socialist Eastern Europe, and its outcome. At first sight this may seem to be a risky venture. After all, policy research centers and rating institutes keep using the term “economies in transition” and reporting, year by year, on their advances or backdrops measured against a set of transition indicators. Clearly, my suggestion that economic transition came to an end, is not meant to say that changes are entirely over. Instead I propose the following. The new reforms in the second half of the 1990s appear to be less effective levers of economic restructuring than the measures implemented earlier in the decade. Rather than bringing about radically new structures of economic activities, these efforts, in their scope and impact, essentially reflect the influence of the structures that emerged by the middle of the 1990s. As a consequence, in many countries, reformers’ capabilities to enforce, by policy packages, significant shifts from less satisfactory to more promising developmental trajectories, seem to have come close to their limits.

Indeed, by the late 1990s most ex-socialist economies seem to be locked in fairly permanent and self-sustaining configurations, many of which fall short of any efficient market economy, and may in fact imply developmental traps. Yet, these patterns represent “a state of normality for many societies, for better or worse” in the sense that they are able to reproduce themselves.¹ They also have an impact on the dynamics of political life. In the longer run “the decisions of other political actors will not be the sole constraints on political choices. Rather, the economic and sociological changes ongoing in society will pose additional constraints” (Kis, J. 1996: 10). Hence the opportunity for conceptualizing various types of political economies defined by a distinct pattern of interaction between their political and economic aspects.

Within this complex set of problems I shall focus on the following question. State-socialism used to be remarkably successful in creating and maintaining apparently uniform structures and institutions in economy and politics in a number of initially very different societies. How to explain that once it fell apart, its pieces, which shared its unifying legacy as a point of departure, and were exposed to the same exogenous shock of the collapse, entered, in a patterned rather than random way, radically different trajectories of economic and political development? Is there a causal logic to this pattern?² What is the shape of the paths, and which are the mechanisms of their reproduction?

I propose that there is a powerful logic to the post-socialist experience, which originates in the type of integration into the global economy. In turn, integration types can be traced to major activities maintained or taken up during the 1990s. More specifically, it is the attributes of the leading sectors through which the national economy has been tied to the global economy, which have shaped the chances of efficient restructuring and sustainable development.³ In Section 2 I briefly examine the plausibility of my proposition. In Section 3 I present my conceptual framework that differentiates among four polar types of leading sectors: national heavy, national light, transnational heavy, and transnational light sectors. I see four ideal types of post-socialist political economies rooted in them: national large-scale capitalism, national small-scale capitalism, foreign-led large-scale capitalism, and foreign-led small-scale capitalism, respectively. In Section 4 I elaborate on the logic of these trajectories. In Section 5 I conclude.

2. Development, and the pattern of global integration in post-socialist East

The plausibility of a link between various aspects of development and the type of global integration in post-socialist East is supported by the following observations. On the one hand, the more from the West to the East and from the North to the South we move on an Eurasian map, largely the poorer performance we find in important aspects. These include the length and depth of the recession following the collapse, the vigor and sustainability of recovery, and the rates of unemployment and inflation. Data on income distribution, poverty, health and education, and the extent of political freedom reveal a similar pattern. Finally, evidence on many aspects of the quality of governance, such as states' regulatory capacity, the degree of rule of law, and protection of civil and human rights raise the same impression of divergence.⁴

On the other hand, the mode of global economic integration is no less diverse, and covaries with the geographical pattern of the diversity in performance. I start characterizing the integration types by the industry groups with major shares in the total export of a sub-region or a country. For an overview I differentiate among four major categories: resource-based industries, capital-intensive basic manufacturing, capital and skill-intensive complex manufacturing, and labor-intensive manufacturing.⁵ An investigation of the export structure of five sub-regions along the West-East and the North-South axes reveals significant differences in the positions occupied, after a decade of transition, in the global division of labor (Table 1, in the Appendix).

East-Central Europe specializes in industries heavily using foreign capital, technology, and skilled labor, such as cars and car parts, electrical and electronic machinery and components, consumer durables, and computers. A second important area of specialization is labor-intensive manufacturing. Southeast Europe has become a clothing, footwear and furniture belt of Western Europe. These countries combine their light industrial specialization with a secondary focus on resource-based exports. By and large, the Baltic states seem to have kept their role as the westernmost enclave of the former Soviet Union. They earn a good part of their living from services related to Russian oil transit, and from exporting wood and simple wood products, combined with light industry exports. Russia and most of the

western members of the Commonwealth of Independent States (CIS) appear as not much else than major oil, other mineral, and energy producers and exporters with very modest involvement in other activities. Some of the western CIS countries preserved, to some extent, the “heavy-metal” legacy of state-socialism, and export steel and iron, and other basic manufacturing products. Finally, the mineral and cotton belt of the former Soviet Union appears almost intact in Central Asia. While the sub-regional pattern of global integration is diverse enough, individual countries’ major export industries represent the same pattern to a magnified degree, and reveal even more striking variation in specialized production and trade. (Table 2, in the Appendix) Last but not least, the varied pattern of global integration became apparent as early as in 1995/1996. The diversity of the late 1990s seems to result from the consolidation of earlier trends locking the ex-socialist countries in varied pathways of restructuring and development, and limiting the opportunities of radical shifts between them. (Table 3, in the Appendix) How can the above types of specialization account for these countries’ developmental experience and prospects, including their states’ ability to help sustain development against the obstacles it encounters?

3. Latecomers’ prospects in the global economy

The collapse of the socialist system resulted in the arrival of a large number of less advanced latecomers to the global economy. Ex-socialist countries are less advanced in this sense, that while they may be rich in natural resources, labor, and local entrepreneurship, they have to rely on the developed world in their needs for capital, technology, and global entrepreneurial skills including design, global input sourcing, and marketing access and knowledge. Given this dependence (and, in part, interdependence) I restate Peter Evans’ earlier thesis that sounds no less convincing in the global era than before. Development, that is the capacity of the “economy to transform itself and to respond to changes in the global economic environment, such as shifts in comparative advantage or price changes,”⁶ in a less advanced country is unlikely to occur unless it is becoming rooted in a coalition of domestic capital, transnational capital, labor, and the state, all holding a stake in it (Evans, P. 1979).

Specifically, national firms' restructuring and developmental capacities are handicapped if they cannot count on transfers of foreign technology, capital, and advanced marketing and management practices. Similarly, the absence of allies in domestic business may undermine transnational corporations' chances to secure local natural resources, labor and entrepreneurship for the purposes of their own restructuring and expansion. Both types of business are, to some extent, dependent on labor's capability to adapt to new competitive conditions, and its attitude and responses to structural change. Furthermore, business, and labor depend on the state as a provider of public and semi-public goods, such as favorable macroeconomic and legal environment, political stability, infrastructure, specific regulations, and incentives (e.g., infant industry protection). They also may rely on the state as an important organizer or mediator of their networks of cooperation. Finally, labor depends on the state as a core moderator of social, sectoral and regional imbalances. Last but not least, acting in a developmental coalition may help bureaucracies to develop the skills, select and test the policies, and build and fine-tune the institutions that might improve the chances for sustainable development.

Yet, notwithstanding their desirability, such coalitions of stakeholders in national development will not automatically occur. Rather their emergence takes time, and is conditional upon special circumstances. Recognizing the importance of other powerful actors and factors, such as locality and community, international institutions, and supranational structures (e.g., the European Union), I expect the attributes of the leading sector of the national economy to account for many of the conditions of developmental coalitions. I define this important decision arena by the following attributes.⁷

Leading sectors comprise major export industries. I have two reasons to build my framework on export sectors. First, all post-socialist states, even the largest ones, are small, open economies heavily exposed to global influences. The character of the world market segments and niches they try to capture, and of the outward-oriented production processes, in which they specialize, should give us a better impression of their strengths, weaknesses, and prospects, than their activities restricted to domestic contexts. Second, export specialization informs us about much more than just commerce. It also denotes specific roles and configurations of production, firm struc-

ture and management, innovation, marketing, labor skills, unionization, and state assistance, underlying the pattern of global integration. I expect much of this variation to be captured by the combination of two attributes of the leading sector: its economic organization, and structure of governance.

Therefore, first, I define leading sectors by their typical economic organization, which reflects the impact of the main factor of production required, whether capital, skills, or labor.⁸ Economic organizational features rooted in factor-intensity locate sectors “horizontally” within a national portfolio of productive activities. Typically, some industries are capital-intensive, and require standardized mass-output and large plant size to be efficient. Others exhibit low capital intensity but heavily rely on skilled or unskilled labor, and efficiently turn out a broad range of differentiated commodities typically produced in small or medium-sized plants and firms. Accordingly, on the economic organizational dimension, major industries can be placed on a continuum between two polar types, heavy and light. Mining, steel, and chemicals fall close to the heavy pole, and footwear and clothing to the light pole.

From a developmental viewpoint, the key difference between heavy and light leading sectors lies in the difficulty they pose to economic restructuring. The heavier a leading sector, the less flexible its business and labor are, and the more difficult will be its restructuring agenda. Conversely, the lighter a leading industry, the more flexible its key actors are, and the easier is for them to undertake the restructuring project. Moreover, the state, a third crucial actor will typically find it more difficult to assist the efforts of heavy, than of light, industries. All this is so for the following reasons.

Heavy sectors are characterized by specific equipment, infrastructure and labor skills that less easily lend themselves for uses in new productive activities. Hence the difficulty and high costs of responding to market shifts both in the short and longer run. Instead, the characteristic actors of heavy sectors, large firms, and organized and concentrated labor, are both more dependent on and capable of, collective pressure for, state assistance to maintain the status quo even in hard times. However, notwithstanding the pressure under which they have to act, states are typically less capable of a meaningful restructuring assistance. To give an example, states hardly can influence the terms of private actors’ operations: typically, in heavy sec-

tors the optimal balance of prices and quantities of export and production are globally set.

In contrast, in light leading sectors equipment, infrastructure and labor skills are less specific and allow easier and less costly adaptation to changing conditions. Neither is there much need for state help to maintain the status quo in hard times, nor much capacity to fight for it: the large number of small firms and the dispersed and unorganized labor typical to light industries limit the potential for collective action. Yet, to the extent that help is needed, it is easier offered: states are more likely to have at their disposal the means (e.g., exchange rate policies, or export promotion) to improve light leading sectors' competitive positions.

Nevertheless, in addition to the factors of production, there are special intangible assets, such as technology, and global marketing access and knowledge, which play key roles in restructuring and development. It is very likely, that the actors having these intangibles under their command, can also govern the industries intensively relying on them, especially if the key actors are able to set the terms of other firms' access to technology and marketing skills.

Keeping this in mind, I also define leading sectors by their typical governance structure, which reflect the impact of the control over the main intangible asset required. The "governance structure of authority and power relationships between firms... determines how financial, material, and human resources are allocated and flow," and sets the terms of the "vertical" incorporation of the "horizontal" segments of the national activity portfolio, whether heavy or light, as production fragments into transnational value-added chains (Gereffi, G. 1997: 113).

While both types of intangibles may be important across the entire economy, new technology embodied in capital investment plays crucial role in certain complex heavy sectors, and is less important in others. In turn, marketing access and knowledge is the key to restructuring in most if not all light industries. As a definition, in less advanced countries many of these assets are unlikely to be at the disposal of domestic private and state actors in the required quantity and quality. To the extent that the crucial assets of restructuring are controlled by domestic or transnational actors, leading sectors can be placed on a continuum between two polar types of governance, national and transnational. While in a global context the

boundaries between national and transnational control are heavily contested in virtually every sector, relatively simple basic industries, such as mining, metals, wood and cotton production, or activities intensively using locational advantages, such as tourism services, may represent the last resorts for national governance. In contrast, typically car-manufacturing, electrical and electronic industries, textiles, and clothing fall close to the transnational governance pole.

In a developmental perspective, the core difference between national and transnational leading sectors lies in the asymmetry between foreign and local agents' capacity to foster national development, and the degree of their reliance on, and commitment to, such a cause. "Multinationals have opportunities that local firms do not have. They will maximize their profits in terms of a global strategy, not a local one. In addition, the logic of profit is always ambiguous. Corporations, no matter how sophisticated, make decisions on the basis of incomplete, uncertain information...Choices about what products to produce, where to produce them, and how to produce them must be based on educated guesses and the direction of the guess depends on the environment in which it is made" (Evans, P. 1979: 36, with reference to Goodman, L. W. 1975).

In addition, typically, transnational firms are more mobile across the national borders than the firms of—especially the ex-socialist—national economies, which usually lack the resources and skills required for massive relocation of their activities to another country.⁹ The implication is that while domestic firms' responses to restructuring pressures are likelier to unfold in a national economy context for better or worse, transnational firms may altogether take flight from the task once their opportunities abroad look better.

It follows that the mobility of capital across the borders is much less a blessing for restructuring and development, than its flexibility across production levels, product mixes, and sectors within the national economy. Yet, there is a difference in the degree of transnational actors' transborder mobility. In large part, this is rooted in previously discussed sectoral attributes. Specifically, the transnational takeover of a heavy leading sector requires substantial foreign direct investment (FDI), which usually parallels tighter equity based control, full or majority foreign ownership. However, equity interest and massive investment imply sunk costs that are likely to increase the commitment of transnational capital to domestic causes. In com-

plex manufacturing industries, where technology is usually controlled by large, vertically integrated transnational corporations (TNC), a major takeover may result in the lasting presence of a key agent of change in the national economy. Furthermore, the related decrease of the threat of capital flight improves national bureaucracy's capacity to influence the terms of cooperation between transnational and local firms.

Yet, the pattern seems to be quite different in light leading sectors, where transnational governance is exercised by small, medium and large branded companies, fashion design centers, and trading firms, which typically do not own their production facilities but control access to global marketing knowledge and networks of commerce and design. Neither strong equity interests nor high sunk investment costs constrain the cross-border mobility of TNC in these heavens of "migrant" capital. Thus, the credible threat of swift relocation amounts to a permanent constraint on bureaucratic capacity to improve the terms of collaboration for local business and labor. An important implication is that while national light leading sectors seem to predict better chances for efficient restructuring and sustainable development than national heavy industries, transnationalization turns the logic upside down, and endows (at least certain types of) transnational heavy leading sectors with a more promising potential than most transnational light industries.

In combination, the pattern of economic organization and governance structure demarcate four types of the leading sector: national heavy, national light, transnational heavy, and transnational light. Each type includes the full continua between the extreme and the most mixed cases in terms of organization and governance occurring within the same firm, firms within the same industry, and industries within the same sector. Accordingly, we may locate countries' entire activity portfolio on a sectoral map, where the "west-east" axis exhibits the variety of economic organization from heavy to light, and the "north-south" axis the diversity of governance structure from transnational to national (Figure 1).

Specifically, a national heavy leading sector comprises the relatively most inflexible and the least inflexible fractions of nationally governed heavy industries, as sectoral extremes. Transnational heavy firms are generally more flexible than national heavy firms, because they are more likely to claim command over the key restructuring asset, new

technology. Nevertheless, transnational heavy leading sectors include, as sectoral extremes, industries that are relatively the most, and the least, immobile across national borders. Similarly, light industries in the eastern half of the map should, in general, be more flexible, than heavy industries. Yet, a national light leading sector comprises the relatively least, and the most flexible subgroups of national small bourgeoisie, as sectoral extremes. Finally, transnational light industries and firms are by and large more flexible than national light industries, because they are more likely to claim command over the key intangible asset of restructuring, marketing access and knowledge. Nevertheless, a transnational light leading sector includes, as sectoral extremes, industries that are relatively the least, and the most, mobile across national borders.

How can the above sectoral decision arenas account for the emergence or fading of developmental prospects? I shall argue below that two types, transnational heavy and national light leading sectors, are more likely to host developmental coalitions, than the two remaining types, national heavy and transnational light leading sectors. I shall also argue that two of the related political economies, which I shall term foreign-led large-scale capitalism and national small-scale capitalism, are likelier to bring together the key players in “a multidimensional conspiracy in favor of...development” (Hirschman, A. 1981: 93), than either national large-scale or foreign-led small-scale capitalisms.

4. Leading sector coalitions and development paths

A developmental coalition cannot be rooted in anything but the interaction of the most capable elements of domestic business and labor with those fractions of transnational capital that are most committed to the cause of national development, and the most autonomous and capable groups of state bureaucracy. What decides about such degrees of capabilities? As I argued above, domestic business and labor are the more capable, the more their flexibility enables them to react to short and long term market shifts by changing product levels, product mixes, and the sectoral scope of their activity. Yet, they also need to dispose of, or find ways of getting access to, the key intangible assets of restructuring, technology, or marketing

access and knowledge. Once these assets are held by foreign business, local firms will have to concede to transnational domination in exchange for improved restructuring capacities. Transnational actors, both relatively inflexible and flexible, across product levels, mixes, and sectors, typically do have advanced technology and marketing skills at their disposal. Yet, the actual value of their assets for domestic development purposes also depends on their commitment to that cause. This in turn is indicated by the character and permanence of their local presence, or inversely, by the degree of their cross-border mobility. Large investment, acquired property, and dense network of contacts with local suppliers, buyers, and services providers imply higher stakes, stronger contribution, lower propensity to outward migration, and consequently better developmental capacities, than low or no investment, non-equity forms of control, shallow integration with domestic actors, and maintained or increased cross-border mobility. In sum, accepting certain forms of transnational governance not only may enable local actors' access to key restructuring assets, but also may enhance the developmental potential of dominant TNC. In contrast, other patterns of transnational domination may not bring about improvement in any of these aspects.

Finally, state bureaucracies' autonomy and capability of restructuring and developmental assistance largely depend on the character of the major sectoral actors they interact with. First, alignment with multiple agents facilitated by relatively balanced, mixed forms of governance may help national authorities to resist domination by particularistic interests, whether foreign or local, and maintain or acquire a certain degree of autonomy crucial for a national agenda. Second, bureaucratic skills to efficiently assist restructuring may both be acquired, institutionalized, and fine-tuned in the process of interaction with capable private actors, and depleted by being captured or cornered by private interests, that either lack the capabilities or the incentives to mobilize them.

All in all, flexible domestic actors, who ally with settled transnational players endowed with the crucial factors of restructuring, and are linked to them by fairly balanced structures of governance, are likelier to enhance the quality of state assistance to development. How will this all play out in the context of the sectoral political economies? To demonstrate the plausibility of these propositions below I shall elaborate on the logic linking the interests and capabili-

ties of essential actors, domestic capital, foreign business, labor, and the state, to the opportunities of efficient restructuring and sustainable development. (For a simple illustration of the suggested relationships and dynamics see Figure 1 below.)

4.1. National large-scale capitalism

A national large-scale capitalist political economy is likely to be governed by the most inflexible fraction of national heavy bourgeoisie whose dominance is linked to and mediated by the services of an inward-looking sectoral state bureaucracy that is captured by them and lacks developmental capacity. Their rule results from, and is reproduced by, the inter-sectoral dynamics of competition and cooperation characteristic to the heavy half of the sectoral map, further depleting and degrading, in this case, the developmental capacities of national private and state actors.

Under heavy competitive and restructuring pressures, associated with the post-socialist transition, a conflict of interest emerges between the least inflexible and most technology-dependent “developmentalist” fraction, and the “conservative” rest of the national heavy bourgeoisie. The former fraction will be inclined to trade control for technology, and will start establishing licensing agreements, joint ventures with minority foreign participation, and supplier-buyer relationships, with transnational corporations. This involvement will further enhance their flexibility (that is, will imply their “north-eastward” movement on the sectoral map.) Developmentalists will put the state under pressure to mediate and support their transnational alliances, or at a minimum, will not hinder but tolerate the economic reforms enhancing the capability of the most transnationally linked sectoral bureaucracies to organize such networks. In contrast, the most inflexible, and least technology-dependent conservatives will intensify pressure on the most domestically oriented elements of sectoral bureaucracy to squeeze out foreign competitors, and assist them to maintain the status quo without restructuring. The organized, relatively well-paid and concentrated labor employed by the conservative fraction will join the employers’ lobby for fear and cost of losing their jobs in the industries heavily relying on their specific skills.

Consistent with the profile of its dominant business fraction, the global integration path of a national large-scale capitalist political economy is likely to get stuck with export-oriented, resource-based or basic mass manufacturing for foreign buyers that remain the least immobile across the national borders because of the ease at which they can replace their suppliers in one country with suppliers in another. In certain cases this development path may be combined with repeated frustrated attempts at economic diversification by import substituting industrialization (ISI). States are torn between the clashing intra-sectoral interests, and exhibit a continuum between the two extremes of a captured state, and a failing developmental state. The latter will squeeze exporters and other industries for fiscal revenues to finance ISI, yet is sentenced to failure by the increasing inflexibility of private agents, the lack of orientation and selectivity of ISI priorities, and of the absence of technology and skills needed for efficient restructuring.

4.2. Foreign-led large-scale capitalism

A foreign-led large-scale capitalist political economy has a fair chance to bring together, in a “conspiracy for development,” the least inflexible and most technology-dependent fraction of national large-scale domestic bourgeoisie, their employees, the most outward immobile fraction of transnational business, and the most transnationally oriented elements of the sectoral state bureaucracy capable of a developmental assistance. Their alliance is a possible, though by no means granted, outcome of the inter-sectoral dynamics of competition and cooperation characteristic to the heavy half of the sectoral map. This dynamics may result, in this case, in opportunities for the developmentalist heavy fraction of the national bourgeoisie, their employees, and the state, to acquire and/or upgrade their developmental capacities.

What happens to the embryonic developmental alliance that may have started to form in the national heavy arena? Most probably this alliance is not sustainable under national governance. Significant technology transfer embodied in substantial foreign direct investment is hardly probable without majority or full foreign ownership. Therefore, TNC are likely to increase their control over the activities

closely related to their core competencies through acquisitions by privatization, and larger equity shares in joint ventures. This involvement, however, increases their stakes in the national economy, and further constrains their cross-border mobility (that is, they will move further “westward” on the sectoral map.) Accordingly, much of the developmentalist fraction of heavy national bourgeoisie will have to concede to transnational dominance, and move “upward” to the transnational heavy arena.

Yet, first, TNC may be more ready to share control with national actors in peripheral (and typically smaller scale) activities. They, or their foreign subcontractors settled in the host country, may out-source services, and specific production segments that foster national business’ and labor’s flexible specialization within the transnational value added chain: e.g., in component-supply subcontracting (Gereffi, G. 1997: 126–127). Second, permanent transnational presence offers local players the opportunity to extract labor training, managerial knowledge, and technology transfer from the “domesticated” and “settled” TNC. Third, white-collar domestic labor trained and employed in TNCs may become an important source of entrepreneurial spin-off, reproducing, at internationally more competitive standards, the national bourgeois element within, or connected to, the transnationally governed heavy leading sector. Either way, the interaction has a fair chance to enhance domestic firms’ and their employees’ developmental capacities (and replenish the organizationally more flexible, and in governance terms more balanced, spaces of the sectoral map, next to the intersection of the vertical and horizontal axes.)

Facilitated by the diverse profile of key actors, the development strategy of a foreign-led large-scale capitalist political economy may combine high-end intra-firm and inter-industry export orientation with flexible ISI. State involvement is likely to vary on a continuum between the two extremes of a competition state bidding with rival states for FDI by offering a wide range of privileges, and a transnationally linked developmental state that on the grounds of global integration also achieves significant qualitative upgrading of the national factors of heavy production.

4.3. National small-scale capitalism

A national small-scale capitalist political economy has a chance of bringing about a developmental coalition among the least outward mobile fraction of transnational small-scale capital, the most flexible groups of domestic light business, and the locally oriented members and institutions of local/functional state bureaucracy well endowed with developmental capacities. Their alliance is a possible, though by no ways granted, outcome of the inter-sectoral dynamics of competition and cooperation characteristic to the light half of the sectoral map. This dynamics may result, in this case, in opportunities for the most flexible small-scale national firms, and the state, to acquire and/or upgrade their developmental capacities.

Under competitive and restructuring pressures the least flexible conservative fraction of national light bourgeoisie, and the developmentalist rest of these industries follow different ways of survival and restructuring. The former group whose members find it relatively difficult to rapidly adapt to short-term and longer term market shifts, not least because of their shortcomings in marketing access and knowledge, are likely to be in immediate need of outlets for their underutilized production capacities. These actors will eagerly engage in supplier-buyer relationships with interested transnational light businesses, small and large. In order to minimize costs by subcontracting the relatively least flexible, largest-scale production segments to locals, light TNC may further increase their own flexibility (that is, move further “eastward” on the sectoral map.) Surely, this way the costs for local actors that incur once they follow more autonomous strategies, such as innovative sourcing, market research, marketing and design of their own, can be saved in the short run. However, in exchange for such skills and services delivered by the transnational partner, conservative light business increasingly sacrifice their autonomy and end up switching from the national to the transnationally controlled light sectoral arena.

In contrast, the most flexible light firms and industries may be attractive partners for certain light TNC that are most interested in longer term presence and involvement in the national economy, and invest greenfield, or buy up property shares, in light activities (thereby moving further “westward” within the light quadrant of the sectoral map). Mobilizing local or regional marketing access and en-

trepreneurship, the developmentalist light firms may engage as flexible specialists in the TNC operations, with the resulting increase in their flexibility (that implies movement in the “northeastern” direction within the southeastern quadrant of the sectoral map.) In addition, this developmentalist group may ask for national or more likely local authorities’ financial, organizational, and regulatory assistance to strengthen their capacities. It is from this strengthened position that competitive national small and medium-sized business engage in the more promising deal of a developmental alliance characterized by a significant, or indeed dominant, national governance component.

Facilitated by the diverse profile and specialization of the allied parties, the developmental strategy in this type of political economy can combine more promising forms of intra-firm and intra-industry trade, such as original equipment manufacturing, with joint outward expansion ventures (Gereffi, G. 1997: 128–130). In the latter case local business specializing in regional sourcing may learn organizing and managing regional cross-border production chains. While acting as middlemen for the TNC, local capital may reap its own gains from its expertise to incorporate other less advanced economies’ labor and markets into these transnationally linked national development projects. Bureaucratic involvement may occupy various positions on a continuum between the roles strengthening local entrepreneurship by infant industry protection, or by assisting the transnationalization of the more competitive local actors by export promotion or supportive foreign policy.

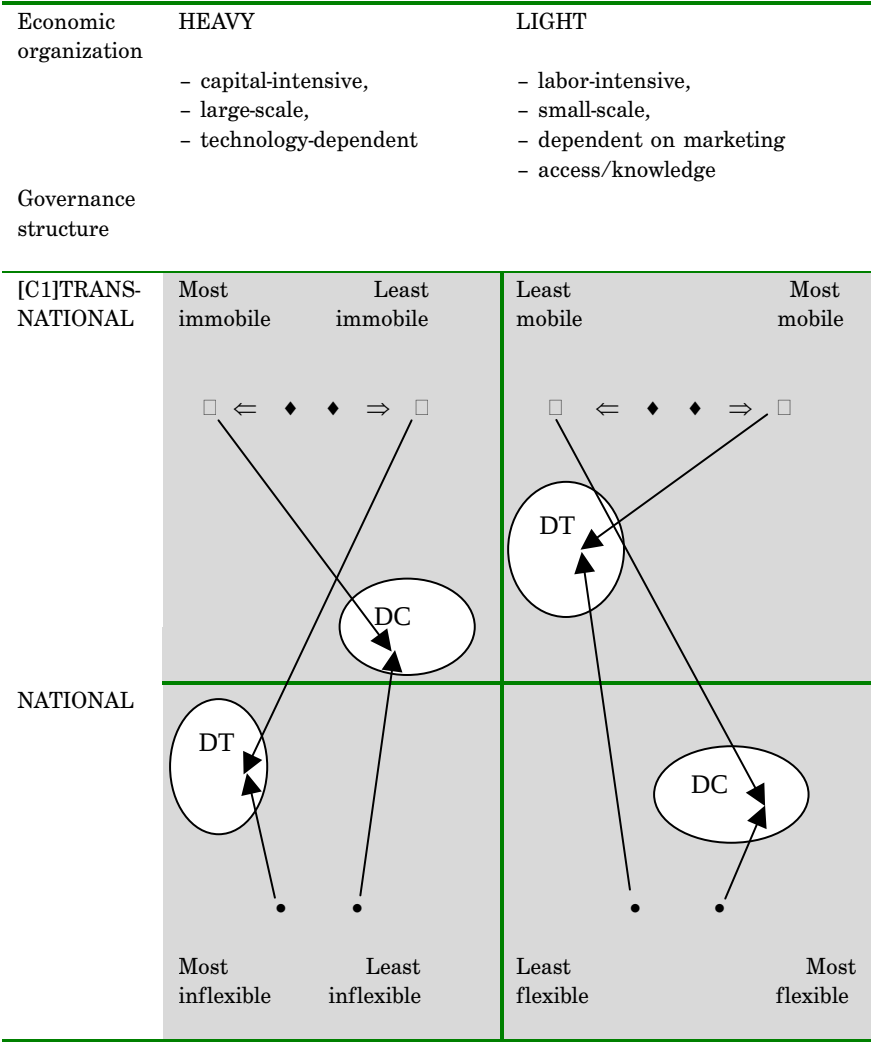
4.4. Foreign-led small-scale capitalism

A foreign-led small-scale capitalist political economy is likely to be governed by the most outward mobile fraction of foreign light capital whose dominance is linked to and mediated by the services of an outward-looking functional state bureaucracy that is cornered by transnational private actors, and does not have much developmental capacity. Their rule results from, and is reproduced by, the inter-sectoral dynamics of competition and cooperation characteristic to the light half of the sectoral map, further depleting and degrading, in this case, the developmental capacities of national private and state actors.

Under competitive and restructuring pressures, outward mobile light TNC can easily decide to leave the national economy at little loss. Yet, for domestic actors who switched to new, transnationally governed contexts, and engaged in low level/low gain export-processing assembly activities, (Gereffi, G. 1997: 123–126) the exodus of their essential buyer/supplier contacts results in very hard times. The more so, because this kind of incorporation into transnational chains may bring little in terms of training and knowledge transfer. To the contrary, earlier relationships with local and foreign suppliers, designers, wholesale and retail outlets might well have atrophied, leading to a deterioration rather than upgrading of their flexibility. (That is, these local firms move further “westward” on the sectoral map.)

Resulting from the limited and weakened developmental capabilities of national actors, foreign-led small-scale political economies combine low-end intra-industry trade with efforts at keeping migrant TNC on board. The latter component may imply the competitive downgrading of national human resources, and may result in low wages, anti-labor regulation of industrial relations, and poor work conditions. National or local functional bureaucracies’ roles in foreign-led small-scale capitalist political economies can be located on a continuum between the two extremes of a competition state of the above type, and a state involved in damage control measures in cases of massive capital flight. Any of these options reflect very limited developmental capacities.

Figure 10.1 Sectoral map¹⁰



5. Conclusion

1. In light of the above thoughts the question inspiring much of the earlier research agenda on post-socialism—transition to what?—appears as less puzzling than it used to be a decade ago. The presented framework seems to offer a fairly coherent, micro-founded logic to discuss and conceptualize the diverse outcome of the transition region-wide. Specifically, by the late 1990s the developmental prospects of most ex-socialist economies can broadly be characterized by a number of permanent and self-sustaining configurations: national large-scale capitalism, foreign-led large-scale capitalism, national small-scale capitalism, and foreign-led small-scale capitalism. Furthermore, the sectoral approach seems appropriate to perceive the dynamics and factors of various national economies' advances on, and the limits to radical shifts between, the paths.

To recall, a national large-scale capitalist political economy is driven toward a developmental trap by a conservative coalition between inflexible and powerful business and labor, who capture sectoral bureaucracies to help them to maintain the status quo and squeeze their less inflexible and more developmental domestic and foreign rivals out of the arena.

In contrast, a foreign-led large-scale capitalist political economy is a promising ground for the least inflexible elements of national grand bourgeoisie, skilled labor, the most outward immobile TNC, and a capable, transnationally linked sectoral bureaucracy, to combine their forces in a coalition for national development.

A national small-scale capitalist political economy offers the chance for the most flexible elements of national petit bourgeoisie, the least outward mobile fraction of foreign small and medium TNC, and a capable, local/functional bureaucracy, to join in a coalition for national development.

However, a foreign-led small-scale capitalist political economy is driven toward a developmental trap by the dominance of “quicksilver” foreign capital over the least flexible and developmentally handicapped groups of national petit bourgeoisie, and by a cornered bureaucracy that migrant TNC degrade to a role of minimizing the costs of their volatile local operations.

2. For an empirical research and deeper analysis, the encompassing

sectoral categories used in Section 2 have to be further disaggregated. For example, the features of resource-based global integration, and the mechanisms of lock in the national large-scale capitalist development path can, in a comparative manner, be studied on the case of the leading gas-sector in Turkmenistan, petrol in Russia, and the wood export industry in Latvia. Similarly, the features of the complex manufacturing integration path, and the related risks and opportunities of foreign-led large-scale capitalisms, can be traced to different activities in the Czech Republic and in Hungary: road vehicles in the former and car-parts and computers in the latter case. Yet, even on the basis of the presented stylized evidence, it seems intuitively convincing and logically plausible to argue, that Hungary's development is more satisfactory than Romania's, while Romania's somewhat more promising than Russia's, precisely because of the structure of risks and opportunities stemming from these countries' powerful "sub-economies": foreign-led, capital-intensive complex manufacturing, foreign-led labor-intensive manufacturing, and national resource-based sectors, respectively.

3. In-depth research has to cope with the fact of multiple, rather than single, leading sectors, and the related issue of mixed, rather than ideal, types of political economy. Again, the outlined ideal types seem to offer a promising point of departure for the conceptualization of the interaction between various leading sectors within the same national economy. To stay with the above examples: Hungary differs from Romania in that it combines a transnational heavy with a transnational light leading sector, whereas Romania a transnational light specialization with a national heavy complex of activities. While the potentially unpromising impact of Hungary's migrant foreign capitalism may partly be counterbalanced by the consolidating effect of her settled transnationals, Romanian development appear as both captured and cornered on the national and the transnational dimensions alike. In striking contrast, Russia or Turkmenistan, have not made even the first steps towards any more complex forms of transnationalization. Their resource-based primary and basic manufacturing secondary leading sectors, still mainly under national governance, combine forces to exaggerate the negative features of a national large-scale trajectory.

4. The transnational sectoral approach may help to illuminate the reasons for the virtual absence of one type of political economy, national small-scale capitalism, in the post-socialist East. Currently, light sectors are either not leading in terms of their share in external economic relations, or they are not any longer (or yet again) under national governance. Apart from the general difficulty of creating an internationally competitive national small bourgeoisie in a global economy, a specific handicap of the ex-socialist countries' is highlighted by the sectoral map. In the Eastern cases, the opportunities for the emergence of powerful national light industries from scratch appear to be squeezed by two equally expansive adjacent sub-economies. As I tried to argue above, both the national heavy and the transnational light leading sectors are equipped with all capacity to limit a reallocation of factors/assets of production and state assistance in favor of a competitive local business.

5. Finally, neither the variation in developmental performance, nor the presented leading sectors and trajectories are uniquely post-socialist. Rather the leading sectors of the East seem no less important for less advanced economies in other parts of the world: car-manufacturing in Mexico, Brazil, South Africa, and Spain; electronics in Malaysia and Ireland; textiles and clothing in the Caribbean, Turkey and Portugal, and oil in Venezuela, and Indonesia. It is the task of cross-regional comparative research to specify the extent to which the post-socialist pattern is but a variant subordinated to a general and unifying logic of late development.

Appendix

Table 10.1 Major Export Industries in the Post-socialist East in 2000
(percentage of total export in current USD)

	Resource- based industries	Capital- intensive basic manufacturing	Capital and skill-intensive complex manufacturing	Labor- intensive manufacturing
East-Central				
Europe	17	18	36	26
Southeast				
Europe	30	15	12	41
Baltic States	44	12	19	27
Russia and the				
Western CIS	64	11	10	11
Central Asia	68	5	3	11

Source: Author's own calculation based on the U.N. COMTRADE Database. Shares do not add up to 100% because of the differences caused by the "special transactions" category. East-Central Europe: Czech Republic, Hungary, Poland, Slovak Republic, Slovenia. Southeast Europe: Albania, Bulgaria, Croatia, and Macedonia, Romania. Baltic States: Estonia, Latvia, and Lithuania. Western CIS: Armenia, Azerbaijan, Belarus, Georgia, and Moldova. Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan.

Table 10.2 Major Export Industries in Hungary, Romania, Latvia,
Russia, and Kazakhstan, in 2000
(percentage of total export in current USD)

	Resource- based industries	Capital- intensive basic manufacturing	Capital and skill-intensive complex manufacturing	Labor- intensive manufacturing
Hungary	14	9	50	24
Romania	25	16	15	42
Latvia	53	12	9	25
Russia	60	14	6	3
Kazakhstan	81	15	2	1

Source: Author's own calculation based on the U.N. COMTRADE Database.

Table 10.3 Major Export Industries in the Post-socialist East in 1996
(percentage of total export in current USD)

	Resource- based industries	Capital- intensive basic manufacturing	Capital and skill-intensive complex manufacturing	Labor- intensive manufacturing
East-Central				
Europe	24	20	24	28
Southeast				
Europe	33	19	10	37
Baltic States	41	13	17	28
Russia and the				
Western CIS	60	11	10	3
Central Asia	58	18	5	11

Source: Author's own calculation based on the U.N. COMTRADE Database. The comparability of data in Table 1 and Table 3 is limited by the fact that 1996 export figures are available for a smaller number of countries. Moreover, in some cases figures refer to 1995 or 1997 rather than 1996. East-Central Europe: Czech Republic, Hungary, Poland, Slovak Republic, and Slovenia. Southeast Europe: Albania, Bulgaria, Croatia, Macedonia, and Romania. Baltic States: Estonia, Latvia, and Lithuania. Western CIS: Armenia. Central Asia: Kazakhstan, Kyrgyzstan.

Notes

- 1 For this claim see Thomas Carothers 2002: 18. Carothers' concern is the varied outcome of the "third wave" of democratization.
- 2 I am indebted to Michael Shafer for his help in structuring my question.
- 3 This idea originates in the proposition of Michael Shafer (1994) that was built and tested in the context of the developing countries.
- 4 For statistical data on growth, unemployment and inflation see EBRD (2000). Data on income distribution, poverty, health and education are available in The World Bank (2000) Evidence on political freedom and civil rights is found in Karatnycky, A., Motyl, A., and A. Piano, eds., (2001). Evidence on the quality of governance is published in Kaufmann, D., Kraay, A., and P. Zoido-Lobaton, (2002).
- 5 According to EBRD 1999: 179, resource-based industries include agriculture (SITC-classification: 0, 1, 4, 22, 29) wood, oil, gas, electricity, coal, stone, non-ferrous metals, skins and furs, textile fibers (SITC-classification: 21, 24, 26, 27, 28, 32–35, 63, 66, 68). Capital-intensive basic manufacturing includes paper, chemicals, rubber, plastic, ferrous metals (23, 25, 51–53, 55–59, 64, 67, 69). Capi-

- tal and skill-intensive complex manufacturing includes transport and industrial machinery, pharmaceuticals, telecommunications equipment, etc. (71, 73, 74, 78, 79, and 54, 72, 75, 76, 87, 88). Labor-intensive industries include textiles, clothes, footwear, furniture, etc. (26, 60, 61, 65, 77, 80–85, 89).
- 6 This interpretation of restructuring capacity as the key to development is from Gilpin, R. 1987: 77, quoted in Shafer, M. 1994: 11.
- 7 The concept of sectors as decision arenas originates in Schmitter, P. 1990.
- 8 When defining sectors by economic organization and its impact on restructuring I follow Shafer, M. 1994: 32–48.
- 9 The stress is on “typically.” While there are examples of ex-socialist national firms’ operations abroad, mainly in the East, until the end of the 1990s such relocations were sporadic at best.
- 10 DT stands for developmental trap, and DC for developmental coalition.

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Nationalism, Transnationalism and Postnationalism

WILL KYMLICKA

In a recent paper, János Kis argues that we need to get “beyond nation-building,” and to develop a post-nationalist conception of political community (Kis 2001). My aim in this chapter is to explore different visions of what such a postnationalist order would look like, and to identify some of the challenges to it.

The example Kis discusses concerns Hungarian nationalism. He suggests that new forms of self-government might develop within the European Union that would enable ethnic Hungarians who currently live across state boundaries to act collectively. This “post-nationalist” form of Hungarian self-government, unlike earlier forms of Hungarian nationalism, would not seek to make the Hungarian state and Hungarian nation coincide. Historic efforts to make state and nation coincide—whether through irredentist attempts to redraw state boundaries or through encouraging the Hungarian diaspora to settle in Hungary—have been unsuccessful, if not disastrous.

Instead, Kis’s new model would seek to create forms of Hungarian self-government independent of nation-state boundaries, cutting across existing state boundaries, although sheltered by the larger framework of the European Union. He sees intimations of such a model in the recent Good Friday Agreement in Northern Ireland, which enables the Irish republican minority in Northern Ireland to exercise a degree of collective action with their kin in the Republic of Ireland.

I’m broadly sympathetic to Kis’s model of trans-border Hungarian self-government, and I share his desire to exploit the opportunities for new forms of collective political agency made possible by the European Union. However, I would not describe his account as “post-nationalist.” On the contrary, I think its attractiveness de-

pends precisely on the fact that it accommodates nationalist identities and aspirations. Moreover, I think this is true of other recent accounts of “post-nationalism” as well. My aim in this chapter is to show that various phenomena described as “postnational” remain profoundly “national” at their core, and that ideas of nationhood are still central to our collective political imaginary.

This is not to say that the forms of nationalism and nationhood are static and unchanging. On the contrary, nationalism has always been an evolving phenomenon, adapting to new challenges and opportunities. That is the key to its resilience over the past two hundred years. New forms of so-called postnationalism are, I believe, best understood as the latest adaptation of nationalist impulses. Moreover, and perhaps more controversially, I will also suggest that this continued centrality of nationhood is a good thing. I doubt that a postnational political order would be morally preferable, in terms of basic liberal values of freedom, democracy and justice.

This topic is a complex one, and can be examined from a variety of angles. In this chapter, I will explore the debate through the prism of citizenship, comparing older models of national citizenship with newer models of postnational citizenship. I begin with a description of the old model of liberal-national citizenship, which began to emerge in the late eighteenth century, and which has become gradually entrenched throughout the West (Sections 1 and 2). I then examine various conceptions of “postnational” citizenship (Sections 3 and 4), and try to show how rooted they are in nationalism.¹

1. Citizenship in Liberal Nation-States

The model of citizenship that has dominated the theory and practice of Western democracies for the last 150 years has rested on two central premises. The first concerns the values of citizenship, which have typically been defined in *liberal-democratic* terms. If citizenship can be understood in part as a package of rights and responsibilities, then this package has been defined by reference to liberal-democratic values. At the heart of our citizenship rights are individual liberties. These include freedom of association, speech and conscience, and more generally freedom of choice about how to lead our lives. Similarly, our duties as citizens are quintessentially liberal duties—e.g.,

the duty to be tolerant, to accept the secular nature of political power and hence the separation of church and state, to exercise our individual autonomous judgement when engaging in voting or public reasoning.

The second characteristic concerns the boundaries of citizenship, which have invariably been defined in *national* terms. If citizenship can be understood in part as membership in a political community, then the traditional model of citizenship emphasizes membership in national political communities. The nation-state has been seen as the privileged locus for political participation, self-government, and solidarity. If democracy is the rule “of the people,” then it is the nation that defines “the people” who are to rule themselves. We exercise self-determination through electing national legislatures, and our citizenship rights are protected by national constitutions.

This picture of citizenship as based on liberal-democratic values institutionalized in national political communities has been powerful in the West. Western democracies have had great success in inculcating this model of citizenship. The levels of popular commitment to both liberal values and national institutions are surprisingly high in most Western countries.

This model has recently come under challenge, as I discuss below, but it’s important to consider why it has been so successful. There was nothing inevitable about this model. After all, very few political communities were either liberal-democratic in orientation or national in scope two hundred years ago. Yet we have witnessed two overwhelming trends in the last two centuries in the West: (i) the nearly-universal reordering of political space from a confusing welter of empires, kingdoms, city-states, protectorates and colonies into a system of nation-states, all of which have embarked on “nation-building” policies aimed at the diffusion of a common national identity, culture, and language throughout the territory of the state; and (ii) the nearly-universal replacement of all forms of pre-liberal or non-democratic forms of government (e.g., monarchies, oligarchies, theocracies, military dictatorships, Communist regimes, etc) with systems of liberal-democracy.

These have both been long-term processes. The process of “nation-building”—i.e., of standardizing and diffusing common national languages, laws, flags, anthems, schools, public institutions, and identities—was a long and protracted one in most countries. Within a few

years of the French Revolution, for example, the elites in Paris had adopted a conception of what language, culture and identity a French citizen should have, but it was not until the twentieth century that these ideas took hold in much of the rural periphery or in the lower classes (Weber 1976). It was a combination of modern technological innovations—such as trains, telephones, radios and television—combined with an expanded state role in the provision of education, health care, and other social services, which finally gave Western states the means for establishing a “national” presence throughout the territory of the state, through national transportation systems, national media networks, national legal institutions, national educational and health services etc.

In some countries this process of nation-building was strongly contested, particularly if there were sub-state groups which viewed themselves as nations of their own with a history of governing themselves. Where such “nations within” have been strong enough, they have been able to resist these nationalizing policies. This indeed is the first sort of challenge to the traditional model of national citizenship that I will discuss below—the challenge of minority nationalism, of which the Québécois, Catalans, Flemish and Scots are good examples.

But minority nationalisms aside, this sort of nation-building has been strikingly successful. In particular, it has proven effective in integrating members of the working class. Indeed, the need to integrate the working class into a common national community was one of the defining features underlying the development of citizenship in the twentieth century. According to T. H. Marshall’s well-known account, the history of citizenship in England can be seen as a three-stage development, each stage occurring in a different century: citizens acquired civil rights in the eighteenth century; political rights in the nineteenth century; and social rights in the twentieth century (Marshall 1965). This third stage extension of citizenship to include social rights was intimately bound up with ideas of nation-building, and in particular, with the national integration of the working class.

As Marshall notes, citizenship is not just a certain legal status, defined by a set of rights and responsibilities. It is also an identity, an expression of one’s membership in a political community. And his argument for extending citizenship rights to include basic social rights, such as health care and education, was precisely that it would

help promote a common sense of national membership and national identity within the working class. Ensuring that people had health care and education was important for Marshall not just for humanitarian reasons—i.e., to meet basic needs. Social rights would also help integrate previously excluded groups into a common national culture, and thereby provide a source of national unity and loyalty. The goal was to include people in a “common culture” which should be a “common possession and heritage” (Marshall 1965: 101–2). Providing social rights would help secure “loyalty to a civilization that is a common possession.” He was writing in particular about England, and the need to integrate the English working classes, whose lack of education and economic resources excluded them from enjoyment of this national culture, be it Shakespeare, Donne, Dickens, King James Bible, the Glorious Revolution, or cricket.

Marshall felt that a common set of social rights would integrate people into a common national culture, and that this was good not only for the previously-excluded group, but also for the state. There were fears that if the working class didn’t identify with British civilization, its members might be tempted to support “foreign” ideas, particularly Communism and Soviet Bolshevism. Moreover, from the point of view of the state, it is easier to govern a society when its citizens share a common national language, culture, and identity. All of the major functions of the state—communication and consultations, planning, investment, regulations, enforcement—work better if there is a certain cultural commonality amongst citizens. (I will return to this below.)

In short, extending citizenship to include common social rights was a tool of nation-building, intended in part to construct and consolidate a sense of common national identity and culture. And this helps explain how these social rights are implemented in practice. For example, the right to education is not a right to education in any language the children or parent chooses, but rather to education in the national language, since the goal is not just to meet some abstract need for rationality, literacy or knowledge, but also to educate people in a way that will help integrate them into the national culture. Similarly, Western countries do not provide health care in separate hospitals for each ethnic group, even though this might be an efficient way of delivering health care, since the goal is not only to meet certain basic needs in the abstract, but rather to create a

common sense of citizenship, based on common entitlements and common experiences in the exercise of those entitlements. Social rights are, in general, the right to gain certain common benefits through common public institutions operating in a common national language, so as to meet basic needs while simultaneously creating a common national identity.

Whatever the motives, the development of the welfare state has been quite successful in integrating the working classes into the nation throughout the Western democracies. To be sure, there are many class differences between the popular culture of the masses and the high culture of the well-off. The affluent are more likely to prefer tennis to wrestling; or to read newspapers rather than tabloids. But amongst all classes there is a common language, the core of a common national culture,² and a common loyalty to the state as a protector of the nation. Moreover, this core national culture bears the imprint of all classes. While it involves exposing working-class children to the high culture of the elites, it also exposes upper class children to the popular culture of the masses.

Indeed, it is now often the working class that is the strongest defender of ideas of nationhood, resisting efforts by elites to tear down national boundaries. This working-class commitment to preserving the nation-state is sometimes seen as evidence of an illiberal or irrational conservatism, or of the manipulation of the masses by unscrupulous populist demagogues. But it can instead be seen as a commitment to a model of political community that, in theory and to some extent in practice, is open to members of all classes, resting on a national identity, language and culture that is shared by all.

It is important to remember that in earlier periods of European history, elites tried to dissociate themselves as much as possible from "the plebs" or "the rabble," and justified their powers and privileges precisely in terms of their alleged distance from the masses. Aristocrats often spoke a different language from the popular vernacular, viewed themselves as a separate race, and would not even have understood the idea that they could or should share the same culture as the peasants or laborers. The rise of nationalism, however, valorized "the people." Nations are defined in terms of "the people"—i.e., the mass of population on a territory, regardless of class or occupation—who become "the bearer of sovereignty, the central object of loyalty, and the basis of collective solidarity" (Greenfeld 1992: 14). National

identity has remained strong in the modern era in part because its emphasis on the importance of 'the people' provides a source of dignity to all individuals, whatever their class. So it should not be surprising that the masses have a deep emotional attachment to political communities that operate in a distinctly "national" milieu.³

In short, we have seen a process of nationalizing Western societies. It took a long time to reach the lower classes and outlying regions—in some cases, only in the past half-century—but once it took hold, it developed powerful and enduring forms of national identification across class lines.

The process of liberalization and democratization has been equally drawn-out. In many European countries, liberal-democracy was in an evenly-matched battle with both fascism and communism until World War II, and it wasn't until the 1970s that military dictatorships were overthrown in Portugal, Spain and Greece. And even those countries that remained stable liberal-democracies, like Britain or the United States, were far from ideal in their actual implementation of liberal-democratic principles. It would be more accurate to say that, until recently, Western states were liberal-democracies for some groups (particularly white, middle-class, Christian men), but illiberal and undemocratic for other groups. At various points in the history of these countries, the right to vote or run for office was restricted to those of a particular class, race, gender or religion, and even when these restrictions were restricted, there remained various other forms of discrimination in access to educational and economic opportunities or social benefits.

It was not until the civil rights revolution of the 1960s and 1970s that firm constitutional and statutory protections of equal rights and non-discrimination were developed for women, gays, and racial and religious minorities throughout the West. We are still far from achieving genuine equality in life-chances for many members of these groups, but there has been definite progress in the protection of civil, political and social rights on a non-discriminatory basis. And with these developments, we can plausibly describe Western states as liberal democracies for all citizens, not just for privileged groups.

Here again, this process of liberalization and democratization has been strikingly successful, in the sense that support for the general principles of liberal democracy is hegemonic—over 95% in most Western states. There is no credible alternative today to the basic

principles of constitutional democracy; anyone who questions these principles is almost immediately labeled as an extremist or fanatic. There are debates about precisely which rights deserve constitutional protection, and about how they should be interpreted and enforced. But the general idea of a constitutional democracy that guarantees certain civil, political and social rights on a non-discriminatory basis is virtually unchallenged in the West.

So the old model of citizenship is the culmination of two long-term processes: (a) a process of nation-building, in which national languages, cultures, loyalties, and institutions were diffused socially downwards from the elites to the working-class and geographically outwards to peripheral regions; and (b) a process of liberalization and democratization, in which disadvantaged groups fought to gain non-discriminatory access to the civil, political and social rights of citizenship. While both processes started in the eighteenth century, it is only in the twentieth century, and in some cases only in the last few decades, that they have been more or less fully implemented.

While both processes were initially contested by rival visions of the appropriate values or scope of political community, the resulting model of liberal/national citizenship eventually triumphed. Indeed, its triumph was so great that, for a few decades between the 1950s and 1980s, it was virtually the only model of citizenship present in public debate or academic writings. The assumption that citizenship referred to the exercise of liberal-democratic rights and responsibilities within a context of national political institutions was so widespread that many theorists did not feel the need to defend this assumption, or even to make it explicit. It was just taken for granted.⁴

2. Evaluating the National/Liberal Model

No sooner had this old model been comprehensively implemented than it began to be questioned. Since the 1990s, in particular, we see an increasing number of people who question the necessity or desirability of nation-states as the appropriate scope for citizenship. Most new models of postnational citizenship rest on the assumption that we can sever the link between liberal-democracy and nationhood. They seek to develop forms of liberal-democratic citizenship that are not institutionalized in national institutions, and that do not require

shared national languages, cultures, identities, or loyalties. The processes of nationalization and liberalization may historically have gone hand-in-hand in the West, but the latter can now be separated from the former.

Indeed, some people argue that linking liberal-democracy to nationhood leads to a contradiction. Liberalism is universalistic and individualistic, whereas nationhood is particularistic and collectivistic. Tying notions of liberal citizenship to nationhood is therefore inevitably exclusionary—it will involve illegitimately denying rights to those individuals who are not seen as authentic or full-fledged members of the “nation.”

This contradiction can certainly be seen in the history of Western democracies. It is reflected in the historic denial of the franchise to immigrant groups or religious minorities on the grounds that they were not, and could not become, full members of the nation. It is reflected in notions of “Christian America” or “White Australia,” in which the American or Australian nation was defined in terms of particular religious or racial characteristics. It is also reflected in gender-coded notions of nationhood, in which men were defined as the defenders of the nation, women as the mothers of the nation, and accorded different citizenship rights and responsibilities on this basis.

Wherever nations are defined in these ethnically or religiously-exclusive ways, or in gender-coded ways, there is indeed a contradiction between promoting liberal-democracy and upholding nationhood. And since nations have often been defined in these illiberal ways, many critics argue that the best way to promote greater liberalization or democratization is to divorce ideas of democratic citizenship from ideas of nationhood.

In practice, however, Western states have dealt with these contradictions not by abandoning the centrality of nationhood, but by liberalizing and democratizing notions of nationhood. The Australian nation has been redefined from a “white” nation to a “multicultural” nation; the American nation has been redefined from a Protestant or Christian nation to a multifaith nation; gender-coded notions of nationhood have been replaced with notions of nationhood which are committed to gender equality.

As a result of these changes, the content of nationhood has been dramatically “thinned” in most Western countries, compared to fifty

years ago.⁵ We have abandoned earlier assumptions that members of the nation should share the same race, religion or lifestyle. Yet these thinner notions of a “multicultural” or “multifaith” nation are still very much notions of *nationhood*: citizens are still expected to speak a common national language, share a common national identity, feel loyalty to national institutions, and share a commitment to maintaining the nation as a single, self-governing community into the indefinite future. Ethnic and religious minorities have been granted equal citizenship rights, not because it no longer matters whether they are members of the nation, but because they are now seen as (and indeed have become) full members of the nation or “the people.”

So having citizenship that is national in scope and liberal-democratic in content is not as contradictory as some people believe. Notions of nationhood are not inherently exclusionary towards religious or ethnic/racial minorities, or women and gays. Notions of nationhood have thinned and expanded to include such groups as full members of the nation.

This points to an important fact about the nature of nationhood in the modern world—namely, it is extremely amorphous and protean. Many commentators in the 1850s or even 1950s would have said that it was inconceivable to imagine a non-racial or multi-racial conception of German or Australian nationhood—the idea of “German blood” or “White Australia” seemed foundational to the very idea of the German or Australian nations. So too with Catholicism in France or Italy. But these exclusionary ideas of nationhood were not foundational. They were abandoned when they no longer served people’s needs and aspirations. Throughout the West, earlier beliefs that nations were held together by racial purity, religious faith or cultural authenticity have been abandoned, so as to make room for new people, new ideas and new practices. Nationhood has preserved its centrality to modern political life because it has proven capable of adapting to changes such as immigration or secularization.

So the achievement of greater liberal-democracy in the West has come, not through abandoning ideas of national citizenship, but by redefining nationhood in more liberal and democratic terms. Some commentators would go further and claim that this is the only viable basis for liberal-democracy in the world today. The only sort of liberal democracy that has ever been achieved, it is argued, is in states that are conceived of as the embodiment or expression of a particular

national community, and which are legitimized by reference to ideas of national sovereignty. The only sort of liberal-democratic political community that is possible is one that is grounded in the idea of the nation as "the bearer of sovereignty, the central object of loyalty, and the basis of collective solidarity," but which thins and democratizes its understanding of nationhood.

What would explain such a link between nationhood and liberal-democracy? There is obviously no logical link between these two ideas. We all know of nation-states that are not liberal-democracies: consider Spain, Portugal, or Latin America in the 1970s, during the rule of the military dictators, or countries in post-communist Central Asia in the 1990s. These were nationalizing states, but not liberal democracies. Conversely, there is no logical reason why liberal-democratic values cannot be institutionalized at the supranational level, as we see today in the European Union. We can imagine forms of citizenship that are national but not liberal, or liberal but not national.

Yet many authors, often labeled as "liberal nationalists," argue that there is an important affinity between nation-states and liberal democracy.⁶ We can think of liberal democracy as involving three distinct kinds of principles: (a) social justice; (b) deliberative democracy; and (c) individual freedom. Liberal nationalists argue that all three of these principles can best be achieved—or perhaps only be achieved—within *national* political units, and that any attempt to divorce liberal-democratic citizenship from this setting is problematic.

Let me say a few words about each of these linkages:

(a) *social justice*: Liberal democratic theorists differ amongst themselves about the requirements of social justice. Some left-liberals favor a dramatic redistribution of resources so as to achieve some conception of "equality of resources." But even those on the center-right of the liberal spectrum generally agree that distributive justice requires: (a) equal opportunity to acquire the skills and credentials needed to participate in the modern economy, and to compete for valued jobs; (b) a system of social entitlements to meet people's basic needs, and to protect against certain vulnerabilities (e.g., health care, pensions; unemployment insurance; family allowances).

Why think social justice in these senses has any intrinsic connection to nation-states? Liberal nationalists suggest two reasons. First,

a welfare state requires us to make sacrifices for anonymous others whom we do not know, and whose ethnicity, religion and way of life differs from our own. In a democracy, such social programs will only survive if the majority of citizens continues to vote for them. History suggests that people are willing to make sacrifices for kin and for co-religionists, but are only likely to accept wider obligations under certain conditions. In particular, there must be some sense of common identity and common membership uniting donor and recipient, such that sacrifices for anonymous others are still, in some sense, sacrifices for "one of us." Moreover, there must be a high level of trust that sacrifices will be reciprocated: i.e., that if one makes sacrifices for the needy today, that one's own needs will be taken care of later. Liberal nationalists argue that national identity has provided this common identity and trust, and that no other social identity in the modern world has been able to motivate ongoing sacrifices (as opposed to episodic humanitarian assistance in times of emergency) beyond the level of kin groups and confessional groups (Miller 1995; Canovan 1996).

Second, the commitment to equality of opportunity, by definition, requires equal access to training and jobs. As the economy industrialized, jobs have come to require a high degree of literacy, education and the ability to communicate (compared to work in a peasant economy). According to Gellner, the diffusion of mass education in a common language was a functional requirement of the modernization of the economy. On his view, the "nationalization" of education was not initially done to promote equality of opportunity for all citizens, but was simply a way of ensuring an adequate labor force (Gellner 1983). However, the nationalization of education was quickly adopted by social democrats as a tool for greater equality in society. National systems of education, providing standardized public education in a common language, succeeded in integrating backward regions and the working class into a common national society, and made it possible in principle for children from all regions and classes to gain the skills needed to compete in the economy. Indeed, in many countries, equality of opportunity is often measured precisely by examining the success of different groups within these common national educational institutions.

For both of these reasons, "nation-building" policies can be seen as promoting social justice by promoting the solidarity needed to moti-

vate redistribution, and by promoting equal access to common educational and economic institutions.

(b) *deliberative democracy*: Liberal democracy is, by definition, committed to democratization. But for liberals, democracy is not just a formula for aggregating votes: it is also a system of collective deliberation and legitimation which allows all citizens to use their reason in political deliberation. The actual moment of voting (in elections, or within legislatures) is just one component in a larger process of democratic self-government. This process begins with public deliberation about the issues which need to be addressed and the options for resolving them. The decisions which result from this deliberation are then legitimated on the grounds that they reflect the considered will and common good of the people as a whole, not just the self-interest or arbitrary whims of the majority.

Why think deliberative democracy in this sense has any intrinsic connection to nation-states? Here again, liberal nationalists suggest two sorts of reasons. First, as with social justice, deliberative democracy requires a high level of trust. Second, collective political deliberation is only feasible if participants understand one another, and this seems to require a common language. In principle, one could imagine extensive translation facilities amongst people of different languages, but this can quickly become prohibitively expensive and cumbersome. When nation-states promote a common national language, therefore, they can be seen as enabling a more robust form of deliberative democracy. For liberal nationalists, national political forums with a single common language form the primary locus of democratic participation in the modern world, and are more genuinely participatory than political forums at higher levels that cut across language lines.

Why? For one thing, the average citizen only feels comfortable debating political issues in their own tongue. As a general rule, it is only elites who have fluency with more than one language, and who have the continual opportunity to maintain and develop these language skills, and who feel comfortable debating political issues in another tongue within multilingual settings. So there are practical reasons why politics conducted in the national vernacular is likely to be more democratic (Kymlicka 2001: Ch. 10). Moreover, there is an important symbolic value to using the language of the people in po-

litical life. As I noted earlier, one of the most powerful attractions of nationalism is its claim that the political community belongs to “the people,” and not to the elite. The use of the language of the people is confirmation of this central democratic idea.

(c) *individual freedom*: The link between individual freedom and nationhood is more complicated than that of social justice and deliberative democracy. The latter two are collective enterprises, and it is clear why they might require some sense of bounded community. By contrast, it may be less clear how nationalism can be seen as promoting individual freedom. After all, nationalism tends to assume that people’s identity is tied to their nation, and that people can only lead meaningful lives within their own national culture. Isn’t this in conflict with the liberal ideal of autonomy, which rejects attempts to imprison people in ascribed group identities?

According to liberal nationalists, however, the relationship between individual autonomy and national culture is more complex. Participation in a national culture, they argue, far from inhibiting individual choice, is what makes individual freedom meaningful. The basic idea is this: Modernity is defined (in part at least) by individual freedom of choice. But what does individual choice involve? People make choices about the social practices around them, based on their beliefs about the value of these practices. And one’s national culture not only provides these practices, but also makes them meaningful to one. As Margalit and Raz put it, membership in a national culture provides meaningful options in the sense that “familiarity with a culture determines the boundaries of the imaginable.” If a culture is decaying or discriminated against, “the options and opportunities open to its members will shrink, become less attractive, and their pursuit less likely to be successful” (Margalit and Raz 1990: 449). For this reason, the liberal commitment to individual freedom can be extended to generate a commitment to the ongoing viability of national cultures.

This doesn’t explain why people need access to their *own* national culture, rather than integrating into some other national culture. Liberal nationalists offer a number of reasons, however, why it is difficult for the members of a decaying culture to integrate into another culture. According to Margalit and Raz, the option of integrating is difficult not only because it is “a very slow process indeed,”

but also because of the role of cultural membership in people's self-identity. Cultural membership has a "high social profile," in the sense that it affects how others perceive and respond to us, which in turn shapes our self-identity. Moreover, national identity is particularly suited to serving as the "primary foci of identification," because it is based on belonging not accomplishment. Hence cultural identity provides an "anchor for [people's] self-identification and the safety of effortless secure belonging." But this in turn means that people's self-respect is bound up with the esteem in which their national group is held. If a culture is not generally respected, then the dignity and self-respect of its members will also be threatened (Margalit and Raz 1990: 447-49). Similar arguments about the role of respect for national membership in supporting dignity and self-identity are given by Taylor (1992) and Tamir (1993: 71-3).

Tamir also emphasizes the extent to which cultural membership adds an "additional meaning" to our actions, which become not only acts of individual accomplishment, but also "part of a continuous creative effort whereby culture is made and remade." And she argues that where institutions are "informed by a culture [people] find understandable and meaningful," this "allows a certain degree of transparency that facilitates their participation in public affairs." This in turn promotes a sense of belonging and relationships of mutual recognition and mutual responsibility (Tamir 1993: 72, 85-86). Nickel emphasizes the potential harm to valuable intergenerational bonds when parents are unable to pass on their culture to their children and grandchildren (Nickel 1995). Anderson and Chaim emphasize the way national identity enables us to transcend our mortality, by linking us to something whose existence seems to extend back into time immemorial, and forward into the indefinite future (Anderson 1983; Gans 1998). For all of these reasons, liberal nationalists argue, people's sense of individual freedom and meaningful autonomy is typically tied up with participation in their own national culture.

All of these arguments can be disputed. Indeed, none of them would be remotely plausible if national cultures were static or hermetically sealed. It is quite clear that modern individuals do not want to simply reproduce the ways of life of their ancestors, but rather want the right to question and revise them, and also to learn about and adopt whatever is interesting and attractive from other national cultures. People would not support nationalist

movements that cut them off from the larger world of ideas, goods, and practices.

Many commentators have concluded from this that modern freedom-loving citizens are abandoning (or will soon abandon) ideas of bounded nationhood in favor of "cosmopolitanism." But here again, we mustn't underestimate the protean character of nationalism. Ideas of nationhood have increasingly adapted to accommodate this desire for cultural openness. It is no longer considered "UnAmerican" to eat Italian food, practice Chinese meditation techniques, buy German automobiles, or listen to African music. (This is related to the "thinning" of ideas of nationhood discussed above). Indeed, ideals of openness to the world—whether in terms of immigration, free trade or cultural interchange—have become part of the very self-definition of many nations. Nations pride themselves on being open. Yet this is very much a *national* pride. It is "we," as a nation, who have made this transition to a more open society, through our self-governing decisions adopted in our national political institutions. And it is our national culture that is thereby enriched, as we incorporate new ideas and practices and pass them on to our children through our national institutions (schools, media, museums etc). The fact that the boundaries of nations are permeable to goods and ideas and people, and that national cultures are now multicultural and multiethnic, does not change the fact that the nation remains the "the bearer of sovereignty, the central object of loyalty, and the basis of collective solidarity."

Put another way, people want their nation to be "cosmopolitan" in the sense of embracing cultural interchange, without accepting the political ideology of "cosmopolitanism" which denies that nations should be self-governing, or that people have any deep bond to their own national language and society.⁷ Freedom for modern individuals requires a degree of cultural cosmopolitanism, but this is not inconsistent with a political nationalism that privileges open and permeable nations as the prime locus of self-government and democratic citizenship.

In sum, liberal nationalists give a variety of reasons why nation-states provide the appropriate units of liberal democracy. Liberal-democratic values of social justice, deliberative democracy and individual autonomy, they argue, are best achieved in a nation-state—i.e., in a state which has diffused a common national identity, culture, and lan-

guage amongst its citizens. This helps explain the puzzle that “liberalism is the most universal of ideologies yet, paradoxically, it is the most national in form” (Sakwa 1998). As Canovan puts it, nationhood is “the battery” that makes liberal democratic states run (Canovan 1996: 80). It also helps explain why, as Tamir puts it, “most liberals are liberal nationalists” (1993: 139), and why the liberalization and nationalization of political life have gone hand in hand in the West.

Some people argue that this seemingly happy marriage of liberal-democracy and nationhood is becoming less sustainable as the definition of nationhood becomes “thinned.” Perhaps co-nationals were likely to trust and feel solidarity for each other 100 years ago, when they all shared the same race or religion, and when members of racial or religious minorities were denied citizenship. But as the meaning of nationhood becomes thinner, so that co-nationals share less in common in terms of descent, religion or way of life, can it still generate feelings of trust, solidarity and mutual understanding? The answer appears to be yes. Thinned national identities are still strong national identities. Indeed, there is little evidence that the liberalizing of nationhood has diminished the significance of national identities or loyalties in the West.

We can now see why the imminent demise of nationalism has often been predicted, and why these predictions failed. Some commentators have assumed that nationalism would disappear because it was tied to illiberal or premodern ideas of racial purity, religious orthodoxy or cultural authenticity, all of which were inconsistent with the mobility and autonomy desired in the modern world. Other commentators argued that, even if nations were able to liberalize, a liberal form of nationhood would be too thin to sustain bonds of solidarity or trust. In other words, nationalism has been seen as caught on the horns of a dilemma: a “thick” form of nationalism, it is argued, can sustain trust and solidarity, but cannot be liberalized; a “thin” form of nationalism, by contrast, can be liberal, but can’t sustain trust and solidarity. Yet it appears that this dilemma is overstated. Nations have been able to adapt to the modern need for mobility and autonomy, by thinning and liberalizing the definition of nationhood, and these liberalized nations have been capable of sustaining social cohesion. Thin national identities have nonetheless proven to be strong identities, capable of serving as the “battery” for cohesive political communities.

This combination of flexibility and resilience is one of the keys to the success of the liberal nation-state model, and explains why it has been taken for granted by most post-war political theorists. Today, however, the link between liberal-democratic citizenship and the nation-state is being questioned from a number of angles. I will examine two of them: (a) minority nationalism; and (b) transnationalism. These are both challenges to the *scope* of citizenship, not to the values or principles of liberal-democracy per se. As I noted earlier, there is no credible alternative to liberal democracy in contemporary political debates, and support for the general principle of a constitutional democracy is virtually unanimous in the Western democracies. However, they do challenge the privileging of the nation-state as the locus of citizenship, either in the name of a narrower *substate* political community (minority nationalism) or in the name of a broader *suprastate* political community (transnationalism).

3. *The Challenge of Minority Nationalism*

The first of these challenges is that of minority nationalism. As I noted earlier, the attempt to construct mono-national political communities has been strongly resisted by groups which view themselves as “nations within,” and which mobilize to maintain or regain their historic rights of self-government, with their own public institutions, operating in their own national language.⁸

The Québécois are a paradigm case of such a group, whose successful nationalist mobilization has precluded any attempt to turn Canada into a traditional “nation-state.” Other cases of substate nationalism in the West include the Flemish in Belgium and Catalans in Spain. But the phenomenon of minority nationalism is a universal one. The countries affected by it “are to be found in Africa (for example, Ethiopia), Asia (Sri Lanka), Eastern Europe (Romania), Western Europe (France), North America (Guatemala), South America (Guyana), and Oceania (New Zealand). The list includes countries that are old (United Kingdom) as well as new (Bangladesh), large (Indonesia) as well as small (Fiji), rich (Canada) as well as poor (Pakistan), authoritarian (Sudan) as well as democratic (Belgium), Marxist-Leninist (China) as well as militantly anti-Marxist (Turkey). The list also includes countries which are Buddhist (Burma), Chris-

tian (Spain), Moslem (Iran), Hindu (India), and Judaic (Israel)" (Connor 1999: 163–4).

The challenge of minority nationalism cannot be overstated: every case of state break-up in the twentieth century has been associated with minority nationalism, as is every current case of a political mobilization to break up states in the West.

While minority nationalism is a profound challenge to the nation-state, in another sense it confirms the unrivalled importance of ideas of nationhood to the legitimacy of states. Where states have been able to diffuse a common sense of nationhood throughout their territory, there is no effective basis to challenge its right to exist and to govern itself on that territory. A state that truly is a nation-state has a virtually unchallengeable right to exist. There may of course be conflicts, even civil wars, over how such a nation-state should govern itself—witness the civil wars in Algeria between secularists and fundamentalists, or in Nicaragua between leftists and rightists. But neither side in these conflicts contests the right of Algeria or Nicaragua to exist as a sovereign state, since both sides agree that there is an Algerian and Nicaraguan nation, and that it should govern itself through the apparatus of a nation-state.

Conversely, the only way to delegitimize the existence of a state, and to seek to break it up, is to argue that it is not a nation-state, but rather is a multinational empire which has incorporated or imprisoned substate national groups whose distinctive national identities, languages, cultures and institutions are suppressed. That is to say, the only legitimate basis for demanding a new state is to appeal to the idea of national liberation or national self-determination—i.e., to argue that a new state is needed to embody and express the will of a distinct nation.⁹

So minority nationalism is the most serious challenge to the model of a liberal nation-state. Yet, in another sense, it is not a challenge to that model of citizenship at all. After all, minority nationalism appeals to the very same principles that underlie the model of liberal nationalism. It is a reiteration, not a repudiation, of the idea that citizenship should be national in scope and liberal in content. Indeed, all of the historical trends and moral arguments I discussed earlier in relation to the construction of liberal nation-states can be applied to minority nationalisms.

If we consider Quebec, Catalonia, Flanders or Scotland, we see the

same long-term processes at work which we saw earlier at the level of nation-states: i.e., (a) a process of (minority) nation-building, by which a common national identity and culture is extended to all classes and outlying regions; and (b) a process of liberalization, by which the (minority) nation has been redefined and “thinned” so as to be more ethnically and racially inclusive and less gender-coded. Moreover, these two processes have been quite successful, generating high levels of support in these substate regions for both a sense of distinct nationhood and for liberal-democratic values.

As with nation-building at the central level, some critics of minority nationalism have argued that there is a contradiction between these two processes of (minority) nation-building and liberalization. The former is said to preclude the latter, since minority national identities are said to be inherently exclusionary, and hence inconsistent with the liberal imperative to construct inclusive political communities. We can certainly find cases where minority nations have historically been defined in religiously or racially exclusive ways (eg., religious definitions of Québécois nationhood; racial definitions of Basque nationhood). But, as at the central state level, liberalization at the substate level has been achieved not by disavowing ideas of minority nationhood, but through liberalizing these conceptions of nationhood, by making them thinner, and more open to the world.

In short, we see the same powerful combination of political nationalism, liberal-democracy, and cultural cosmopolitanism at the level of minority nations that we saw earlier at the level of nation-states. And, as with nation-states, this process of constructing liberal/national political communities at the substate level has been defended as the best way of promoting cohesive political communities capable of achieving justice, deliberative democracy and individual freedom.

So there is little new here in terms of the underlying idea of citizenship. Minority nationalisms in the West appeal to the same basic picture of citizenship, according to which citizenship involves the institutionalization of liberal-democratic values within national political contexts. This underlying similarity in models of citizenship doesn't tell us how to accommodate minority nationalisms in practice. It doesn't provide any concrete guidance about how to divide powers, share revenues, or allocate language rights. But a crucial first step in addressing these issues, I believe, is recognizing that the

conflict between states and minority nationalisms in the West is not typically a clash of "values." For example, there is a tendency amongst some English-speaking Canadians to say that the Québécois are nationalists whereas we are not; or that we are liberals and they are not. In reality, anglophones and francophones in Canada share the same Western Enlightenment values of popular sovereignty and liberal citizenship. The same is true of minority nationalisms in Catalonia, Scotland or Flanders as well—there is little difference in underlying values between members of the national minority and citizens of the larger state. Indeed, in some areas, national minorities are more liberal than the dominant groups.¹⁰

This suggests that the only feasible and defensible response to minority nationalism is to accommodate, rather than suppress, the minority's national identities and aspirations, through some form of self-government. And this is what we see throughout the West. There has been a clear trend toward the adoption of federal or quasi-federal forms of self-government which create territorial jurisdictions in which the national minority forms a local majority. The national minority can then use its *de facto* control over these territorial jurisdictions to construct its own forms of liberal/national citizenship at the substate level. We see this in Quebec, Catalonia, Flanders, Scotland, and in several other cases of territorially-concentrated national minorities, such as Puerto Rico or South Tyrol. Many of these experiments in minority self-government are new, but I would argue that they have reduced the potential for political instability that often accompanies the problem of conflicting nationalisms within a single state. They have also been morally beneficial, in the sense of constituting a fairer response to the problem, promoting greater equality between the members of different national groups within the same state, while simultaneously promoting processes of liberalization and democratization at both the central and substate levels.¹¹

Minority nationalism, then, raises a difficult political challenge to the nation-state, but the difficulty does not arise from any deep disagreement over the underlying model of citizenship. Both majority and minority endorse the idea that citizenship is exercised within territorially bounded political communities which are simultaneously national in scope, liberal in values, and open to the world culturally and economically. Indeed, the challenge of minority nationalism often becomes greater the more that the national minority shares this

vision of liberal/national citizenship. It was precisely when Québécois nationalist leaders abandoned ideas of economic autarky, cultural purity and racial exclusivity that the old *modus vivendi* broke down, and Québécois nationalism started to compete with English-speaking Canada for immigrants, foreign investment, cooperation with international organizations, cultural exchanges, and so on.

So too with Catalan, Scottish or Flemish nationalism. They pose a challenge to the larger state precisely because they have proven capable of adapting to the imperatives of immigration, free trade, and cultural globalization, and of satisfying the aspirations of an increasingly educated citizenry for democratic participation, economic opportunities, and cultural exchanges. If, as some critics assert, national minorities formed pockets of inward-looking premodern communities, defined in racially and religiously restrictive ways, cut off from the world at large, they would not pose an effective threat to displace the central state and take over its functions and powers. Yet that is precisely the challenge of minority nationalism in the West today, and it is a challenge that arises because minority nationalisms draw upon the same successful formula of nationhood and liberalism. Substate nationalisms, like nation-states, can draw upon the cohesiveness, legitimacy and solidarity of a bounded national community, without sacrificing the inclusiveness and openness of liberalism, and without cutting themselves off from the larger world.

I believe that the case of the Hungarian minorities in Romania and Slovakia—the central case in Kis’s vision of a “postnationalist” order—follows the same pattern. They seek to replicate, rather than contest, the logic of liberal nationalism. Kis argues that they differ from standard cases of minority nationalism because they seek not only powers of (minority) nation-building within a single state, but also seek to exercise self-government in collaboration with other members of the Hungarian nation, across state borders. This challenges the traditional assumption that nation-states exercise unrestricted sovereignty and mutually exclusive jurisdiction over their territory (Kis 2001: 221). As a result, he argues, the Hungarian minorities are potential harbingers of a “postnationalist” order, rather than simply replicating the nationalist order.

Kis’s proposals are intriguing, and I agree that similar institutional creativity will be needed to accommodate other cases of minorities across borders (e.g., the Kurds). However, I think that the

postnationalist label obscures more than it reveals about Kis's proposal. His proposal does indeed challenge certain traditional assumptions about the nation-state—namely, its sovereignty and mutually exclusive jurisdiction—but these are challenges to the power and privileges of statehood, not to the power and privileges of nationhood. It is the state, not the nation, which is being de-centred and constrained by Kis's proposal. Following McCormick, we may want to say that the European Union is ushering in a “post-sovereign” era, in which the previously undisputed assertions of state sovereignty and exclusive jurisdiction are contested (McCormick 1999). But as McCormick himself emphasizes—as a Scottish nationalist—a post-sovereign order is not a post-nationalist order. On the contrary, state sovereignty is being challenged precisely for its inability to make room for the expression of liberal/national citizenship by substate national groups.

4. *Transnational Citizenship?*

So minority nationalism can be seen as replicating, rather than challenging, the model of liberal-democratic citizenship within national political communities. If we want to find a real challenge to this model, we need to look elsewhere. The most obvious candidate is the set of ideas lumped together under the heading of “transnationalism.” Transnationalism doesn't simply challenge the nation-state in the name of some other nation, but rather challenges the very idea that citizenship should be tied to a territorially-bounded national political community.

The term transnationalism covers a range of ideas. I will discuss five forms of political activity that have been described as examples of “transnational citizenship.” I will suggest that, of these five, only one poses a genuine alternative to the liberal/national model, and it is the least significant, and perhaps the least desirable.

(1) *immigrant transnationalism*: In many discussions, immigrants are viewed as the vanguard of a new transnationalism. Immigrants are said to have rejected the old model of immigrant integration, in which they were expected to abandon their previous national identity and assimilate into their new country's national culture. The act of

immigration, on this old view, was seen as a decision to replace membership in one nation with membership in another. That old model probably never really worked in practice, but in any event it is now obsolete. Aided by modern technology that has made it easier to travel to and communicate with their homeland, many immigrants today remain active in the economic, social and political life of their country of origin.

This phenomenon of enduring immigrant participation in homeland politics, while not new, is probably growing in scope, and is increasingly accepted as legitimate. And this does reflect a change in our traditional notions of liberal/national citizenship, which typically viewed nationality as mutually exclusive—i.e., people could (or should) be members of one and only one nation. The idea of being a “dual national” was widely viewed with apprehension until quite recently. This was reflected in legal requirements in most Western democracies that immigrants renounce their previous citizenship in order to naturalize in their new country. Too great an interest in homeland politics was seen as unpatriotic, and perhaps even disloyal.

This idea of nationality as mutually exclusive has been largely repudiated in the West. The desire of immigrants to maintain links with their homeland is increasingly accepted, and is being legally facilitated by the increasing acceptance of dual citizenship. In many Western countries, immigrants are no longer required to abandon their original nationality in order to naturalize.

Is this acceptance of dual nationality a challenge to the assumption that politics should be organized through territorially-bounded national political communities? Not at all. Dual nationals are precisely dual *nationals*—i.e., they participate in, and feel loyalty to, two bounded national communities. The fact that some people participate in two national political communities does not, by itself, explain why politics should be organized on some non-national or non-territorial basis.

Some commentators insist that immigrants today are the vanguard of a “postnational” form of political membership, rather than just being “dual nationals.” According to Soysal, for example, immigrants today reject the expectation that their rights should depend on their inclusion or integration into the “nation,” and instead appeal to postnational norms of human rights which are divorced from any assumptions about how long immigrants have lived in a nation’s

territory, or whether they have integrated into its national culture (Soysal 1994). Since nation-states oppose this attempt by immigrants to avoid national integration, immigrants pursue their claims at a transnational level, such as the EU. Immigrants, then, are seen as harbingers of a new model of political agency in which people demand the right to participate wherever they live, independently of national identity or membership, and look to transnational bodies and transnational norms for the protection of this right. Citizenship in territorially-bounded national communities, on this view, will increasingly fade into irrelevance as more and more people link their political agency to transnational norms of human rights backed up by transnational institutions.

However, there is little empirical support for this postnational interpretation of immigrant claims (Joppke 2001; Koopmans and Statham 1999). On the contrary, public opinion remains strongly supportive of the idea that immigrants should meet some minimal test of national integration (e.g., residency period, knowledge of state language) before acquiring full political rights. And immigrants themselves share this view (Labelle and Salee 2001)! Moreover, immigrants today in most countries of immigration are in fact integrating as quickly if not more quickly than earlier generations of immigrants, in terms of learning the national language, taking out citizenship, participating in national elections, marrying outside their own ethnic group, and so on.¹² Immigrants still typically aspire to some level of national integration, and accept that this is a legitimate condition for the acquisition of full citizenship.

Defenders of the postnational view note that Western democracies have extended the rights guaranteed to various categories of non-citizens (e.g., Turkish guest-workers in Germany), which they interpret as evidence of the triumph of international human rights norms over national laws or national imperatives. But in fact these changes in the rights of aliens have been the result of domestic courts interpreting national constitutions, with international law or the EU being “plainly irrelevant” (Joppke 2001: 58). Moreover, expanding the rights of aliens has been justified, not in terms of universal human rights, but in terms of the immigrants’ participation in the communal life of the host country. The rights of aliens are defended as “protocitizen” rights, in recognition of partial integration and as a step toward fuller national integration.¹³

In short, immigrants today are still expected to integrate into their new national community, they accept the legitimacy of this expectation, and in fact are integrating. There is little evidence that the old model of the integration of immigrants into a national society is breaking down, either in law or in practice. To be sure, immigrants retain an active interest in the politics of their country of origin. But their participation in homeland politics is very “national.” In fact, diasporas are often more nationalist than their co-nationals in the homeland. It is precisely as members of the nation, born and raised in the homeland, that they assert the right to participate in homeland politics, and work to defend its national sovereignty, often against what they perceive as “foreign interference” by international agencies. There is nothing “postnational” about the way diasporas participate in homeland politics—it is nationalist politics in every recognizable sense.¹⁴

So the increasing significance of diaspora politics and dual nationality amongst immigrants is not an example of the transcending of territorially-bounded national communities. These immigrants are literally dual nationals, not postnationals, and the evidence to date suggests that they are as committed as anyone else to the view that politics should remain organized through bounded national political communities, both in their new home and their country of origin.

(2) *transnational advocacy networks*: If we want to find genuinely transnational political activities—i.e., people exercising political agency in forums beyond those of the nation(s) they belong to—we need to look elsewhere. One relevant phenomenon is the growth of what are called transnational advocacy networks. These involve the recruiting of allies in other countries, usually NGOs, to help put pressure on one’s own government. For example, indigenous peoples in Canada have recruited allies around the world to pressure the Quebec government to change its policies on development in James Bay (Jenson and Papillon 2000). Similarly, environmental groups have sought international allies to put pressure on Canada to stop the seal hunt. These international allies may write letters of protest to the Canadian government, organize boycotts of Canadian products, or pressure their own governments to protest the Canadian government.

The same process also works in the other direction: Canadian NGOs are recruited to put pressure on governments in other coun-

tries. Thus Canadian environmental NGOs have been active in pressuring Brazil to change its policies in the Amazon.

These are examples of what Jenson and Papillon call “weak” transnational political agency, since the ultimate goal is still to pressure *national* decision-makers, and the appeal to international allies is instrumental to this domestic goal. As they put it, “transnational networks and alliances are used strategically in a political struggle that remains focused on local or national controversies and in which the main opponent remains the state” (Jenson and Papillon 2000: 248–49).

This sort of transnational activism is an important phenomenon, and often beneficial in forcing governments to reconsider some of the harmful or unjust effects of their decisions. It enables citizens who have only limited political voice within national political systems to amplify their voice, and to highlight harms that might otherwise be neglected.

However, this does not, by itself, lead to the creation of any sort of self-governing transnational political community, nor is it intended to do so. When Canadian NGOs seek European allies to stop the seal hunt, they are not suggesting or hoping that jurisdiction over the seal hunt be shifted from the Canadian government to some new transnational Euro–Canadian parliament. When Brazilian NGOs seek Canadian allies in fighting deforestation in the Amazon, they are not suggesting that Canadians and Brazilians should elect or appoint representatives to a joint Brazilian–Canadian agency that will decide on the development of the Amazon.

Transnational advocacy networks, in this “weak” form, still assume that the ultimate locus of decision-making is territorially-bounded national legislatures. It does not offer any alternative model for determining how political authority should be allocated, or how political communities should be defined. In the end, the weak transnationalism of advocacy networks is predicated on, even parasitic on, the ongoing existence of bounded political communities whose existence and legitimacy rests on their claim to be the expression of the sovereignty and self-determination of a particular nation or people. Transnational advocacy networks are an attempt to influence how nations exercise their sovereignty, not an attempt to offer an alternative postnational or non-territorial forum for political decision-making.

(3) *international legal authority*: The mere fact that people have stra-

tegic reasons to engage in political activism beyond the borders of their nation does not, by itself, imply that political decision-making should be transferred away from bounded nation-states to some postnational or non-territorial structure. To find genuine alternatives to the liberal/national model of citizenship, we need to find cases, not only of transnational activism, but also of transnational decision-making or transnational governance that is replacing or contesting the power of nation-states.

I will discuss three forms of transnational authority: (a) international law, such as human rights law; (b) intergovernmental regulatory bodies, such as the World Trade Organization (WTO); and (c) international legislatures, such as the EU Parliament. In my view, only the third offers a serious alternative to the liberal/national model of citizenship, and it is the least feasible and perhaps also the least desirable.

Let me start with international law, particularly human rights law. In the post-war period, there has been a major expansion in international human rights law, such that respect for human rights is now widely seen as a requirement for a country to be a member in good standing of the international community. Until recently, these declarations were largely hortatory. Violation of human rights "law" led to international criticism, perhaps, but no real international sanction. But we see movements to develop stronger international monitoring and enforcement mechanisms. These include new international courts, such as the International War Crimes Tribunal, or giving existing international courts, like the European Court of Justice, jurisdiction over human rights issues. Or it may involve other forms of sanctions for human rights violations, such as the denial of international loans or even the withdrawal of international recognition for a government.

These developments are often seen as undermining the liberal/national model, since they challenge old assumptions of the unconditional sovereignty of nation-states. These developments assert that there is a legitimate international interest in how nations treat their own citizens, and that the legitimacy of governments requires meeting certain international standards of human rights.

But as I noted earlier when discussing Kis's proposals, challenges to state sovereignty are not necessarily challenges to the liberal/national model of citizenship. On the contrary, the latter also

asserts that the legitimacy of governments is conditional on respect for the rights of citizens. This is precisely what makes it a *liberal*/national model. Indeed, the rights being codified at the international level essentially correspond with the liberal/national view of the rights citizens hold against their governments. There is nothing in international human rights law that conflicts with the liberal/national view of how political authority should be exercised.

There would be a conflict if international law promoted a postnational model of citizenship. Imagine, for example, that international law said that people have rights to full political participation independent of their national membership, and so precluded domestic laws which required people to learn the national language and/or to live a certain period of time in a country before acquiring citizenship. But, as I discussed earlier, international law does not promote a postnational form of citizenship. On the contrary, it implicitly assumes that the world is organized into nation-states that tie citizenship to nationhood. Indeed, it endorses the structuring of the world into national political communities, through its endorsement of the principle of the self-determination of peoples.

In short, international human rights law offers no alternative to the model of liberal/national citizenship. On the contrary, it can be seen as universalizing that model. It is saying, in effect, that the only legitimate form of political community is one that (a) respects the self-determination of nations; and (b) respects the rights of individuals within the nation. The definition of civil and political rights in international law is often weaker than that provided by domestic constitutions in the West—international law does not require all countries to be as liberal or democratic as the most developed Western liberal-democracies.¹⁵ But there is a widespread hope that pressuring countries to meet the minimal requirements of international human rights law will inevitably lead to their more comprehensive liberalization and democratization, so that they become more “like us.”

This helps explain the ambivalent view of international law in North America. There is widespread support for the idea of international human rights norms, but little public support for the idea that our *own* laws should be subject to international review. Most Canadians and Americans think that their national constitution provides fully adequate protection of human rights, and that their national

courts are fully competent to interpret and enforce those rights in an independent and impartial way. We don't need international law or international courts to uphold our human rights.¹⁶

In short, people in the West support international human rights norms, not because "we" need them, but because "they" need them—i.e., people in countries which are not (yet) liberal-democracies. International human rights norms are needed for those countries that have illiberal constitutions, undemocratic political traditions, and corrupt judicial institutions, and who therefore need help in defining, interpreting and enforcing human rights.¹⁷ Ideally, international human rights will push such countries down the road towards becoming liberal-democratic nation-states, like us.

In short, international human rights law, far from challenging the liberal/national model, can be seen as exporting and universalizing it. It does put limits on state sovereignty, but the limits it places are consistent with those already explicit in liberal models of nationhood. Far from seeking to transcend the liberal/national model of political community, it is largely an attempt to entrench it, and to pressure or cajole non-Western states to adopt it.

We have not yet found any real challenge to the liberal/national model of citizenship. Whether it is minority nationalism, dual citizenship, transnational advocacy networks, or international human rights norms—none of these offers any alternative model for organizing political communities except as territorially-bounded national polities.

This shows how pervasive ideas of nationhood are in the modern world. Yet we clearly need international regulatory institutions that transcend national boundaries. We need such institutions to deal not only with economic globalization, but also with common environmental problems and issues of international security, or simply to coordinate air-travel, internet domain names, or the mail. This fact is accepted even by those who emphasize the centrality of nationhood and national identities in the modern world.

Such international organizations are proliferating, both at the global level (e.g., the WTO) and at regional levels (e.g., the institutions established by the EU or NAFTA). At present, these transnational organizations exhibit a major "democratic deficit," and have little legitimacy in the eyes of citizens. They are organized through inter-governmental relations, with little if any direct input from indi-

vidual citizens. Moreover, these institutions have evolved in an ad hoc way, each in response to a particular need, without any underlying theory about the kinds of transnational institutions we want, or how they should be governed, or how they should relate to each other.

In short, while we have an increasing number of transnational institutions, which exercise an increasing influence over our lives, we have no political theory of transnational institutions. We have well-developed theories about what sorts of principles of justice should be implemented by the institutions of the nation-state; well-developed theories about what sorts of political rights citizens should have vis-à-vis these national institutions; and well-developed theories about what sorts of loyalties and commitments citizens should have to these institutions. By contrast, few people have any clear idea what principles of justice or standards of democratization or norms of loyalty should apply to transnational institutions.

It is clear, therefore, that we need to adapt our conceptions of democratic citizenship to include these transnational institutions.¹⁸ To oversimplify, we can imagine two broad strategies for doing so. The first is to construct a genuinely transnational form of democracy—i.e., to create elected parliaments at a transnational level that would have jurisdiction over these transnational institutions. The other strategy is to increase the extent to which transnational institutions are indirectly accountable to national political communities. I will discuss these two options in turn.

(4) *transnational legislative/parliamentary bodies*: One option, then, is to create some form of directly-elected transnational parliament to make decisions about the creation and operation of transnational institutions. Just as democratically-elected national legislatures oversee national regulatory institutions, like the Bank of Canada, so there would be democratically-elected transnational legislatures to oversee transnational regulatory institutions, like the WTO.

The idea of constructing a democratic transnational parliament at the global scale is utopian in the foreseeable future, if only because many countries do not have democratic elections for their own national governments, and so are unlikely to permit democratic elections for transnational parliaments. But many people believe it is feasible on a regional level, such as the European Union or North

America, where all the countries are democratic, and where there is already a high degree of economic interdependence and common political values. And we see the outlines of such a development in the EU Parliament.

This strategy—endorsed by many proponents of “transnational” or “cosmopolitan” citizenship—seems at first glance to be attractive. If we need transnational institutions, and if we believe in democracy, then why not establish transnational democracies to govern them? And yet it is striking that there is virtually no public support for such an idea, particularly in North America. The idea of creating a common North American parliament to make decisions regarding NAFTA-based institutions, for example, is not on the radar screen of public opinion, let alone a subject of popular mobilization. No political party or social movement in any of the three NAFTA countries is pressing to create such a transnational legislature.

Even in the EU, where the idea of constructing a transnational democracy is on the radar screen, there is little popular mobilization behind it. The mass of citizens in EU countries is apathetic or indifferent to the EU Parliament, with low rates of voting in EU elections. The idea of a popularly-elected EU Parliament was supposed to promote the “democratization” of the EU, but it is unlike any other form of democratization in the past century. In other cases of democratization, disenfranchised groups have fought long battles to gain democratic rights, which ruling elites grudgingly conceded. In the case of the EU Parliament, by contrast, there was no popular mobilization. It was an attempt by ruling elites to generate legitimacy for the EU by granting democratic rights that were not requested.¹⁹ Public opinion polls show repeatedly that the mass of citizens of EU member states look to their elected representatives in the national legislature, rather than their representatives in the EU Parliament, as the appropriate persons to debate and defend their interests, *even regarding European-wide policies*. If citizens of France dislike EU agricultural policy, for example, they protest to their national governments, not to their EU representatives.

In short, the idea of a transnational democracy is met with hostility in North America, and indifference in Europe. The prospects for transnational democracy are even poorer in other parts of the world. What is the explanation for this phenomenon?

Is it a problem of size? Are transnational democracies simply too

large to govern democratically? But that cannot be the explanation. After all, a North American parliament governing 400 million would still be less than one-half the population of India, which is a functioning democracy. In fact, it would only be one-third larger than the current population of the United States. A European parliament governing 370 million is even smaller. India and the United States show that it is perfectly feasible to democratically govern hundreds of millions of people.

Why is an American legislature of 300 million perfectly viable, but a North American parliament of 400 million seemingly inconceivable? The answer is obviously not size, but rather the fact that Americans share a common national identity which tells them that they form a single people who belong together in a single, self-governing state. By contrast, they do not feel that Mexicans or Canadians belong to the same "people" or "community of fate," and hence have no desire to govern together with them (and vice-versa—Mexicans and Canadians have no desire to govern together with Americans in a common legislature).

Where this sense of nationhood is strong, political communities can be enormous—hundreds of millions. Conversely, where people do not share a common national identity, then even very small states can be "too big" to govern effectively or democratically. Czechoslovakia, with 15 million, split in two; the Cameroons, with 13 million, may split in two; what's left of Yugoslavia, with 10 million, may split again in three; Georgia, with 5 million, may split in three; Macedonia, with under 2 million, may split in two; Sri Lanka, with 18 million, may split. In these countries, many people are pushing to reduce the size of the political community, not because it is "too big" in a numerical sense, but because there is no sense of common nationhood.

In short, size has nothing to do with people's perceptions about the appropriate boundaries of political community. What matters is a feeling of belonging together, of being a "nation," "people" or "community of fate." Some defenders of transnational democracy recognize this problem, but respond that it should be possible to socialize people in Europe or North America to feel a sense of belonging together, and to see themselves as a single community of fate.²⁰

Held, for example, argues that globalization is undermining the sense that each nation-state forms "a political community of fate,"

since “some of the most fundamental forces and processes which determine the nature of life chances” cut across national boundaries (Held 1999: 102–3). This is a misunderstanding, I believe, of what it means to form a “community of fate.” What determines the boundaries of a community of fate is not the forces people are subjected to, but rather how they respond to those forces, and, in particular, what sorts of collectivities they identify with when responding to those forces. People belong to the same community of fate if they *care* about each other’s fate, and want to *share* each other’s fate. They want to meet certain challenges together, so as to share each other’s blessings and burdens. Put another way, people belong to the same community of fate if they feel some sense of responsibility for one another’s fate, and so want to deliberate together about how to respond collectively to the challenges facing the community. Globalization has not yet eroded the sense that nation-states form separate communities of fate in this sense.

For example, as a result of NAFTA, North Americans are increasingly subjected to similar economic “forces and processes.” But there is no evidence that they feel themselves part of a single “community of fate,” whose members care about and wish to share each other’s fate. There is no evidence that Canadians now feel any special sense of responsibility for the well-being of Americans or Mexicans (or vice-versa).²¹ Nor is there any evidence that Canadians feel any moral obligation to respond to these challenges in the same way that Americans or Mexicans do (or vice-versa). On the contrary, Canadians want to respond to these forces *as Canadians*—that is, Canadians debate amongst themselves how to respond to globalization, and they do so by asking what sort of society Canadians wish to live in, and what sorts of obligations Canadians have to each other. Americans ask the same questions amongst themselves, as do the Mexicans.

The economic forces acting on the three countries may be similar, but the sense of communal identity and solidarity remains profoundly different, as has the actual policy responses to these forces. Despite being subject to similar forces, citizens of Western democracies are able to respond to these forces in their own distinctive ways, reflective of their “domestic politics and cultures” (Banting 1997: 280). And most citizens continue to cherish this ability to deliberate and act as a national collectivity, on the basis of their own national solidarities and priorities.

Why do citizens of national political communities continue to cherish their sense of being distinct communities of fate? In part for the reasons I discussed earlier—i.e., nations have proven to be effective in creating forms of solidarity and forums of democratic participation across lines of class, race and religion. The “masses” in a (liberal-democratic) nation have the cultural capital and institutional means to hold national elites accountable—they are connected by a common language, common media, common education system, common myths, symbols and loyalties. Most citizens fear that they will have no corresponding ability to hold transnational political elites accountable. If an Italian farmer dislikes what a minister in the Italian parliament does, she knows what national television stations or newspapers to complain to, what national political parties and NGOs to contact, and she can do so because she shares the same national language with all of these organizations. But how would an Italian farmer complain to a minister from Denmark in the EU Parliament? There is no pan-European media, no pan-European political parties, and no pan-European language, let alone more intangible issues of common loyalties or solidarities.

As I noted earlier, part of the success of national democracy is the dense web of connections that bind the elite to the masses. The elite governs in the name of the people, speaks the language of the people, shares a common media and education system that inculcate common national narratives and core elements of a common national culture. This is a profound change from pre-national forms of government, in which the elites were cut off culturally, linguistically and institutionally from the masses. Transnational democracy threatens to return us to this pre-national phase, in which the masses will be governed by elites who do not share their own language and culture, and in which politics is conducted in a language and in a media that is “foreign” to the masses. It should not be surprising that ordinary citizens are unenthusiastic about transnational democracy, and view national politics as inherently more democratic than transnational politics.

(5) *intergovernmental regulatory authorities*: If the prospects for the construction of transnational democracy are dim for the foreseeable future, are we condemned to live with the democratic deficit in our transnational institutions? Not necessarily. In the absence of transna-

tional democracy, these international bodies will remain primarily *intergovernmental* in form. They will emerge from negotiations between states, be administered by people appointed by states, and have an agent-principal relationship to states—i.e., they are delegated power by states to exercise in accordance with the interests of these states. It is notoriously difficult to ensure proper accountability of such agent-principal relationships, even at the domestic level. Regulatory organizations are vulnerable to the “reversal of control,” by which agents begin to exercise their delegated power in their own interests, rather than on behalf of the principals (Bohman 2001: 10–11). This problem is even more serious in the case of international regulatory organizations.

But there are ways in which citizens can exercise greater indirect control over these institutions. We need to find ways to hold international institutions more accountable through nation-states. For example, one could imagine giving nation-states stronger veto powers over certain decisions of transnational institutions, so that citizens know what their country could or could not change in those decisions. Or one could require that certain decisions of transnational institutions be debated and approved publicly within each national context, particularly if they involve the imposition of new obligations (Bohman 2001: 13).

More could also be done to ensure greater openness and transparency in these organizations—e.g., requiring that draft agreements or conventions be publicly released before being signed. (This was one of the major goals of protestors regarding the FTAA). Also, various NGOs and INGOs be given a “seat at the table” of these international organizations. Even if not given a vote, or not the same weight of vote as states, the mere presence of these organizations would ensure that citizens would learn more about how the representatives of their nation-state behaved.²² These NGOs and INGOs could then work together in the sort of transnational advocacy networks discussed earlier, to pressure national governments to reconsider their stance on various international issues, if they have ignored important harms or injustices.

In these and other ways, citizens could acquire greater control over transnational institutions through the pressures they can bring to bear on their elected national representatives. Citizens would know more about what sort of power their governments exercise in

transnational institutions, what sorts of positions they have taken, and how well or badly they have represented their national interests. The ability to effectively represent national concerns in transnational institutions would then become an important criterion for electoral success at the national level. And indeed we already see a trend in this direction. Questions about the ability of different leaders and parties to defend Britain's interests in the EU, for example, were a part of the most recent British election.

This may seem like an unsatisfactory response to the growing problem of the democratic deficit of transnational institutions. But I believe that this is the sort of response most citizens themselves want. They look to their elected national representatives to defend their principles and interests within transnational institutions. What we need to do, therefore, is to give elected national representatives the power to evaluate how well international organizations live up to their agent-principal responsibilities, and to give citizens the tools to hold elected national representatives accountable for how well they exercise that power. This indirect form of democratic accountability through nation-states is obviously limited, but to jump over this problem by seeking a more direct form of transnational democratic accountability may be neither feasible nor, paradoxically, democratic. There is no democratic mandate for creating new forms of transnational democracy, in part because ordinary citizens feel (correctly) that they would be less able to participate in an equitable and effective manner at the transnational level than at the domestic level.

5. Conclusion

According to Robert Dahl, "Supporters of democracy should resist the argument that a great decline in the capacity of national and subnational units to govern themselves is inevitable because globalization is inevitable. To be sure, the forces leading to greater internationalization of the economic, political, military, social and cultural spheres of human life appear to be extremely powerful. However, I do not see how we can know with confidence the extent to which globalization is inevitable or contingent. The last three centuries are a graveyard packed with the corpses of 'inevitable' developments" (Dahl 1999: 34).

He suggests that “instead of yielding to triumphal claims of inevitability,” we should examine each case on its merits, to see whether the robust forms of democracy developed at the national and subnational level can be retained and employed in dealing with the challenges of globalization.

Like Dahl, I think that the quality of democratic citizenship achieved in modern liberal-democratic national political communities, while imperfect and inequitable, is nonetheless a significant accomplishment. Any successful response to the challenges of globalization should take advantage of this accomplishment, preserve it, and build on it. Newly emerging forms of transnational political agency will work best if they appeal to the conceptions of popular sovereignty and nationhood that underlie modern Western liberal-democracies, rather than seeking to erode or replace them. And, as I have tried to show, that is indeed what we see with most of the new forms of “postnational” citizenship, including Kis’s own proposal for Hungarian self-government across borders. Whether it is minority nationalism, immigrant dual-nationalism, transnational advocacy networks, or international human rights law, the underlying model of democratic citizenship and political legitimacy remains tied to national political communities. This liberal/national model of citizenship remains the touchstone from which new forms of postnational citizenship depart, and eventually return.

Notes

- 1 This paper draws in part on my “New Forms of Citizenship,” in *The Art of the State*, ed. T. Courchene and D. Savoie (Montreal: Institute for Research on Public Policy, 2003).
- 2 In England, these core elements might include the BBC, Shakespeare, historical events (Waterloo) and figures (Churchill), soccer, and contemporary politicians.
- 3 It may seem paradoxical that elites would diffuse theories of nationhood that valorize “the people.” Why would elites promote a model of political community that ties their legitimacy to how well they reflect and represent the masses? Greenfeld 1992 explores this question, which she ties to inter-elite conflict. In the English case, Henry VIII invoked ideas of nationhood to justify breaking with the Pope. In other countries, aristocrats invoked ideas of nationhood to justify disobeying the King. In yet other countries, later on, nationhood was invoked because it had proven to be the most effective means of mobilizing people and resources for war against rival empires or monarchies.

- 4 According to Rawls, for example, a theory of liberal justice should apply to “the basic structure of society.” But what is the relevant “society”? For Rawls, “society” is defined in terms of the nation-state. Each nation-state is said to embody one (and only one) “society and culture” (Rawls 1993: 277), and Rawls’ theory applies within the boundaries of each nation-state. Rawls is not alone: most modern political theorists have taken for granted that the theories they develop should operate within the boundaries of the nation-state. When theorists develop principles of rights to evaluate constitutions, they focus on national constitutions; when theorists develop an account of the appropriate virtues and identities required for democratic citizenship, they ask what it means to be a good citizen of a nation-state; when theorists discuss what “political community” can or should mean, they are asking in what sense nation-states can be seen as political communities. This focus on the nation-state is not always explicit. Many theorists talk about “the society,” “the government” or “the constitution” without specifying what sort of society, government or constitution they are referring to. But on inspection, they almost always have nation-states in mind. This is remarkable given that liberal values are often defended as universalistic, so that the restriction of their application to national settings would seem to be in some need of justification.
- 5 For more on the thinning of national cultures, and how it distinguishes liberal from illiberal forms of nationalism, see Kymlicka and Opalski 2001.
- 6 For discussions of liberal nationalism, see Miller 1995; Tamir 1993; Canovan 1996.
- 7 On the difference between cosmopolitanism in the sense of cultural openness and cosmopolitanism as a political ideology that rejects the nation-state, see Kymlicka 2001: chap. 10.
- 8 By national minorities, I mean groups that formed complete and functioning societies on their historic homeland prior to being incorporated into a larger state. The incorporation of such national minorities has typically been involuntary, due to colonization, conquest, or the ceding of territory from one imperial power to another.
- 9 Legally speaking, substate national groups do not have a right of self-determination under international law. However, politically speaking, this is the only argument that has any effectiveness in challenging the existence of states.
- 10 This is true of issues regarding gender equality or sexual orientation in Quebec and Scotland. For the more general convergence in political values between national minorities and dominant groups in the West, see Kymlicka 2001: chaps. 10–15.
- 11 On the success of this trend, see Kymlicka and Opalski 2001; Gagnon and Tully 2001; Keating and McGarry 2001.
- 12 For the evidence, see Koopmans and Statham 1999; Kymlicka 1998: chap. 1.
- 13 As Joppke puts it, “Postnationalists have misjudged not only the locus of alien rights, but also their logic. In a postnational reading, alien rights are universal human rights which protect abstract human personhood irrespective of an individual’s communal boundedness and involvement. Regarding migrants, however, the only such personhood right is probably the right of asylum. For all other mi-

grants, a different communitarian logic is at work: the scope of rights increases with the length of residence and the development of ties to the receiving society" (Joppke 2001: 59).

- 14 See Skrbis 1999 on "long-distance nationalism." Diasporas that are long-settled in the West tend to internalize liberal-democratic values, and so often promote a more liberal model of nationalism in the homeland (see Shain 1999 on the way immigrant groups in the United States are used by the government to market the American liberal creed abroad). Nonetheless, these immigrant groups are still committed to the defense of the nationhood and national rights of their ancestral group.
- 15 In the area of social and economic rights, international human rights instruments are often stronger than domestic Western constitutions. But these parts of international human rights law are typically ignored in the West, and often dismissed as a regrettable compromise needed to gain the support of Communist countries for the "real" human rights—ie., civil and political rights.
- 16 The most important exception to this generalization concerns the indigenous peoples in Canada and the U.S., many of whom have looked to the UN as a protector of their rights. This is an exception that proves the rule, since many indigenous people do not regard the U.S./Canadian constitutions or courts as their own, but rather as the constitutions/courts of their conquerors.
- 17 The European Court of Justice has asserted the right to overturn the domestic laws of EU states that violate the European Convention of Human Rights. This remains controversial in many EU countries, and was partly adopted because some EU countries were until recently military dictatorships (Spain, Portugal, Greece) with little or no tradition of liberal-democracy, and because prospective EU countries in Eastern Europe have weak traditions of liberal-democracy or judicial independence. Here again, the international enforcement of human rights norms is endorsed by the citizens in the West primarily to help "them," not to create an international monitor over "us."
- 18 On the need for a political theory of transnational institutions, see Held 1995, 1999; Carter 2001; Bosniak 2000.
- 19 For popular resistance to elite-led campaigns in support of the EU, see Dahl 1999; Wendt 1999.
- 20 For debates about how to democratize the EU, and how to create a feeling of a pan-European "demos," see Lehning and Weale 1997; Nentwich and Weale 1998; Eriksen and Fossum 2000.
- 21 I say "special" responsibility since people feel some sense of humanitarian concern for others wherever they live, even half-way around the world. But a "community of fate" is bound together by feelings of special responsibility which go beyond this universal humanitarian concern. And there is no evidence that Canadians feel stronger concern for Mexicans than, say, Guatemalans.
- 22 See the proposals in Held 1999; Franck 1997; Archibugi and Held 1995; Bohman 2001.

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In Search for Hope and Paradigm

ALEKSANDER SMOLAR

I met János for the first time when I was an émigré in Paris, exactly twenty years ago. Since then, we have talked much by telephone and later, in better times, have met several times a year in Warsaw, Budapest, Paris or New York. We talked about Poland and Hungary, about Europe and “our” Europe, about friends and family. Let me add a few short notes to those intense conversations. These will be about the way the new messy world scene formed after the implosion of the Soviet Union and is described by intellectuals, foreign policy specialists and journalists, engaged—as wrote one of them—“in a competitive and seemingly imperative quest to name an era.”¹

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The eruption of hope that accompanied the collapse of the Soviet bloc in 1989 opened up the Great Decade in the history of Europe and the world. It ended—it could be claimed—on September 11, 2001. The time of great joy and the feeling that the bloody era in history was over lasted for an even shorter, astoundingly short period of time, given the weight of the developments, which were compared to the great landmarks of history during the euphoria of the “autumn of peoples.”

The climate was changing already at the beginning of the 90s. Growing chaos in many parts of the world, decline of old structures, empires and states, and the mushrooming of the conflicts between ethnic, national and religious groups contributed to mounting anxiety, rising concerns about the development of the post-cold war world. It was not difficult to find nostalgia among some international relations professionals for the simplicity and predictability of the

cold war era. Indeed, it was a terrible time but peace-based on intimidation and the MAD principle (Mutually Assured Destruction), ominous and absurd though it was (keeping peace called for readiness of all to die), had some rationality and predictability to it. The leaders of the Soviet Union, the "Empire of Evil," murdered millions of people (though not during the latest decades of the banalized totalitarianism), but they themselves were not prone to suicide. The atheist totalitarian regime could not count on compensation after death. Current fanaticized terrorists die with joy hoping for compensation from Allah.

The 1990s were therefore also a decade marked by the crisis of our perception and ability to describe and understand the world *in status nascendi*. This crisis can be traced in the public language that we use for describing our world, which denotes things we leave behind rather than the state and the conditions we are aiming at. The most popular buzz words in the nineties were "return" (to normalcy, to Europe), "after" or "post;" we observed a proliferation of prefixed word—such as "post-national," "post-modern," "post-communism" or the "post-cold war era." The "end" word made a spectacular career. It all started with Francis Fukuyama and his famous "the end of history." In 1992 already, London *Times* reported that more than 150 books with an "end" in the title were in print. They were allegedly concerned with such areas as the history of art, beauty, British politics, Christianity, comedy, conversations, education, elitism, empires, household chores, innocence, Zionism, insularity, marriage, penalization, science and family. A British author called "endism," "the most powerful and expansive ideology of the late 1990s." Everything appeared to be on decline or nearing its end, with or without hope for the future. Anything you want to describe as a new phenomenon will usually come in negative terms, as news of death. Quite fashionable concepts of "return," or of "transition," were only apparently an exception to the rule: both assumed that countries shedding communism or a simple banal dictatorship aimed at re-establishing a certain mythical past, or at imitating the developed, democratic West. Here, the future was known only due to the fact that it was to mirror the known past or the known West's present.

The world order was once associated with the Westphalian order, based on the domination of nation states and on the identity of territory, population, religion and authority and on the anarchic compe-

tition between sovereign states. The post-Napoleonic order of the Vienna Congress based on the dynastic principle has been long forgotten too. The optimism of the order established in Versailles of 1918, based on the principle of the self-determination of nations also belongs to the past. Nobody would defend today the Yalta order, the foundation of the post war division of Europe. So, what now? What principle should be the centerpiece of a new order? What principle will help reconcile peace with a sense of fairness and will solidify the new rules of international order? Richard N. Haass, today a senior official in the U.S. State Department, wrote in 1995: "Our time is a period of 'international deregulation' with new actors, new opportunities, new relationships and arrangements, but in which there are until now no new rules or principles." Hence, there is no world order, strictly speaking. Therefore, it was only normal for politicians, strategists, intellectuals and journalists to attempt to assign meaning to this new reality by answering some basic questions concerning contemporary world. We can find four types of visions: those which present a *new world order*, according to which the cold war era closed a period of the deep divisions in the world; those which stress new principles of division: *world of new conflicts*, emerging after the disappearance of two hostile blocs of the post-war decades; the third type of analysis –presenting *new world disorder*–unveils the world of chaos, of anarchy, of disintegration; finally, there are views which proclaim *the end of the human world* as we know it: we can find here all sorts of contemporary versions of apocalypses.

New World Order

Following the collapse of the Soviet system, a host of new, quite different interpretations were proposed. However, they all expressed a faith in the restoration of unity of the human world after a period of the big divide. President George Bush, the father of the current U.S. president, proclaimed the New World Order in 1990: "a new era is born out of the times of unrest, an era free from the threat of terrorism, stronger in the search for fairness and more secure in striving for peace." The divisions and confrontations of global enemies were to be replaced by the world of Wilsonian ideals of freedom, democracy and market. The new global order was to rely on the

principle of collective security, on the strengthening of the UN and other international organizations.

While the approach of George Bush, Sr., was captured in a handful of high-level statements and traveled the world because of the author's political role, the true bestseller was an article (later developed into a book) by Francis Fukuyama: *The End of History*. The author derived his visions not only from his observations of the world born on the rubble of the cold war but also from the Hegelian traditions. The end of history means the end of the dialectics of the idea, of the clash between different ideological projects. The fall of Communism meant the death of the only viable alternative to liberalism, to democracy and market as forms of social organizations for decades. After Sept. 11, 2001, when a passionate and determined enemy appeared on the horizon, Fukuyama reaffirmed his view on the unifying influence of modernisation and the lack of alternative to the Western liberal and democratic modernity.

Somebody called Fukuyama's approach a "melancholic triumphalism." Indeed, "the last Man of Nietzsche" inhabiting the times of the "end of history" is not a captivating figure. Mediocre, devoid of passions, centered on his health security and comfort, the last man lost touch with the restless and transcendent idea. Liberated from loyalties and responsibilities that doomed his predecessors to heroic deeds and self-sacrifice, he is tolerant and refuses to judge others because judging brings about a risk of conflict. A today's European—enslaved by the leniency, overprotection by the blown-up welfare state—is for Fukuyama the best personification of the "last man." The return of the master race, the chance of a renewal he sees not in armed conflicts but in the global confrontations of the modern economy.

There are many visions of the integrated future world after the cold war. Some stress the role of international law and its regulatory function, others underline political mechanisms, the role of global citizenship and global character of the future democracy. They rely on a premise that the economic, environmental or security problems we face, require global responses and some forms of global government. David Held in many works explores the prospects for the cosmopolitan democracy. Quite opposite visions can be found in the book of a French intellectual and diplomat Jean Marie Guehenno.² After the time of nation state comes the imperial era, as the Roman

Empire followed the republic. However, the new empire will be deprived of a focal point—it will be rather a network of mutually horizontally interrelated territorial units. It will be a unified world but at the same time an empire without an emperor and without a pope. The state of law follows a democratic state, for which there is no place in the new world. Citizens will be mere legal subjects, holders of rights and obligations in an abstract space deprived of structure and without frontiers.

Guehenno speaks of an empire in a very specific sense. There are, however, many versions of the imperial order related directly to the historic traditions. They appear both on the left and on the right. They serve as a tool of radical critique and for affirmation of new shapes of post cold war realities. In the recent years, especially after Sept. 11, 2001, neo-conservative circles in the U.S. (e.g., around the *Weekly Standard*) spawned numerous analyses presenting today's U.S. as a new empire, a global hegemon, the only power in history which may be compared to the Roman Empire.

The presentation of today's world in imperial terms emphasizes in different interpretations the universalizing impact of language by the Washington consensus. It is very much present in the functioning of the know-how funds, in technology transfer systems, and particularly in the mass deployment of experts in the former second and third world from Washington, London, Frankfurt and Paris. The language of today's missionaries is different from those in the Middle Ages (English not Latin, economy and law rather than theology) but their social and cultural functions are similar. The current imperialism operates indirectly by integrating local elites from all over the world into a global elite, into the new ruling class which holds its annual mass at Davos.

A perfect example of how the global imperial structure is formed today is the tendency for smaller countries to renounce their national currency to further the search for stability and development. Such were more or less the reasons for submitting to the protection of an empire in the past by various nations and tribes looking for security, civilization and development.

New imperial systems manifest themselves—it is often claimed—in the new forms of Western colonialism. The multiplication of the "failed states," of ethnic and religious conflicts, threat to developed countries—all these factors are triggers of intervention and the take-

over of power by the West, usually under the cover of an international organization. This is the situation in Bosnia, Kosovo, East Timor, and now in Afghanistan and Iraq. Both conservative historian Paul Johnson and liberal columnist William Pfaff postulate the need for a new colonialism in order to solve the problems of stability, peace and development in part of the world which is not apparently ready to live a life of its own. Clearly, there are fundamental differences between classic colonialism and the current mentioned practices. Today, such developments are initiated on behalf of the international community and economic interests play a relatively small role. The objective is more to ensure peace, security and to stop genocide.

The ideas of world integration function in the context of the great myth of globalization which developed mainly in 1990. Globalization is about the world without economic, information and communication borders; but is also about the world which has no barriers to the threats to the environment, organized crime and new terrorism. The world is becoming increasingly homogenized as a result of those processes. You can eat at McDonald's, see a Steven Spielberg film in nearly every city, millions of people wear Adidas shoes and speak, or wish to speak English, the *lingua franca* of the contemporary world. The ongoing information revolution largely erases time and space from human interaction; it takes seconds to establish communication with people located in the most remote corners of the globe. It strongly affects the economy, primarily financial flows. It affects politics, too. The immediate and broad access to information by millions of people dramatically narrows the maneuvering space and the autonomy of political elites in their decision making.

Japanese business management guru, Kenichi Ohmae, a radical and enthusiastic eulogist of globalization, questions the relevance of traditional cartography.³ In the global world, it is no longer stated but small administrative units such as Hong Kong, the Kansai region around Osaka or Catalonia are becoming basic business players. Modern Athens, Carthago, and Hanseatic Leagues decide on strategies for business, education, motorway construction, clean air and water. The fundamental values underlying a nation state: liberal democracy and political sovereignty must be redefined.

The Washington consensus, a dominating ideology during the Margaret Thatcher and Ronald Reagan government, looked upon the

state as an obstacle to growth. The problems of development and poverty were to be solved by privatization, deregulation, fiscal discipline, trade and financial market liberalization. Since the end of the 90s, it became an established opinion, promoted by international financial institutions, that a well-functioning market requires strong institutions built and guaranteed by governments.

Universalism, internationalism, or cosmopolitanism, although quite different ideas, all of them implied significant moral choices. Globalization has an utterly different nature. It is portrayed as a force of nature, a pragmatically recognized necessity, the inevitability of contemporary human condition. The choice has apparently disappeared and with it its moral dimension. Gone are politics too, as an art of making a choice by a free community. Politicians are increasingly replaced by two protagonists: a technocrat and a populist. They represent two forms of anti-politics (Pierre Hassner).

September 11 has had a profound impact on our vision of the world. New concepts are proposed which challenge the sustainability of globalization. The return of the state and of the state intervention, of nationalism and of war have been heralded. British philosopher John Gray proclaimed: "The era of globalization is over." But it seems to be a view of a small minority. The present turmoil seems to reveal a world dominated by the imperial United States, powerful as never before and as never before manifesting its will to wield that power to shape the new order in the world.

World of New Conflicts

Bush, Sr., Fukuyama, globalizers, all of them were opposed by different visions of new major conflicts in the world in the aftermath of the cold war: "The Conflict of Civilizations," "The West Against the Rest," Jihad against McWorld, "The North Against the South," the universe of "Asian Values" against the "Western Values."

One author who has had the largest footprint on the ongoing discussion and collective vision of the main lines of conflicts in the world today is unquestionably Samuel Huntington. His popularity has even increased after September 11. Huntington appears to have given a key to the understanding of the tragedy playing in front of the world's eyes.

The history of international conflicts in the modern world has had a number of phases after the Westphalian peace (1648). The key conflicts set princes against monarchs; since the French Revolution wars have been fought by the people; the conflict of ideologies marked all confrontations from the Bolshevik revolution through to 1989. All these wars: of kings, nations and ideologies were in principle fought within the framework of European civilization, they were the "Western civil wars" (William Lind). In the new post-cold war world, says Huntington, the major source of conflict will not be politics, ideology, or economy but culture; the global conflict of civilizations will shape the history of the world in decades to come. Religion has become more important everywhere in the world but in Europe. Religion has dramatically intensified politics.

Huntington has been criticized for attaching priority to conflicts between great civilizations (which he associates with religion) and overestimating their coherence, durability and hostility towards others. Most active conflicts today, set against each other people representing the same civilization. Huntington does not sufficiently appreciate the importance of the opposition—on the one side—between the prosaic, relativistic, and deprived of any illusions modernity and—on the other side—the nostalgia for the sacrum and the absolute which can be found in all religions. September 11 apparently proved Huntington's point. Avid exponents of his prophecy began to speak out (e.g., Oriana Fallaci). Huntington himself refused to interpret the Bin Laden phenomenon in terms of the "clash of civilizations." His restraint may have been caused by the fact that many enthusiasts of his approach could have been found among the enemies of the West and democracy. Milosević's and Tudjman's people or the advocates of "Asian values" (which were a hot commodity at that time) referred to it to validate their aspirations. Radical Islamists, too, describe their hatred towards the West using the language of civilization conflict.

Benjamin Barber (author of *Jihad and McWorld*) describes the contemporary world in terms of a fundamental conflict between two civilization trends. Jihad, in Barber's language, is an anti-modernist, fundamentalist response, potentially found in every religion in every corner of the world. It is an expression of a rebellion against the modernity, against the open world of globalization; it reflects the yearning for tradition and strictly interpreted religion. McWorld is

the contemporary globalized capitalism, Western materialism and a postmodernist consumer society. The tyranny of consumerism is no better than totalitarian violence, claims Barber, though it uses different means. He calls for an opposition against both Jihad and McWorld and he believes the latter is a bigger threat (like Fukuyama, he claims that there are no chances for the victory of Jihad). He does not see the solution in politics, economy or law—he looks for salvation in culture.

Beside Huntington and Barber, there is a large group of observers who believe the major conflict of our time consists in a clash between globalization and tribalism, between universalism and particularism, between the attitude of openness and entrenchment. In flight from a world without frontiers, dominated by identical consumption, entertainment, work and learning patterns, there is a growing tendency to stress divergence, highlight all possible differences and underline particular characteristics of our own identity. The civilization forces which are pulling people closer to one another encounter centrifugal forces of tribal, racial, regional, national or religious identity, which are pushing people apart offering them the sense of warmth, security and meaning. Michael Ignatieff recollected Freud's idea of the "narcism of the small difference:" the smaller the difference the higher the propensity to underline, expose and dramatize the distinctness in search for a collective 'I' in a world where more and more factors seem to threaten differences. This certainly reinforces the brutal conflicts between nations, ethnic groups or denominations sharing much of their cultures (e.g., former Yugoslavia).

New World Disorder

Decades of cold war acted as a freezer for various processes in countries and continents. Its switching off triggered disintegration processes in empires and multinational states and brought about the proliferation of ethnic, national and religious conflicts. Numerous descriptions, theories and paradigms see after 1989 primarily processes of disintegration, falling apart, decline, a small or big apocalypse. This perception seems to rely on the juxtaposition of the Cosmos and the Chaos. On the one hand, there are stable, structured and predictable countries of the Metropolis—roughly equivalent to the

West; on the other hand, there are turbulent Peripheries of the world, torn by wars, revolutions, rebellions, plunged into hunger, and decimated by AIDS. For example, Max Singer and Aaron Wildavsky⁴ classify the world into a "community of security" and the rest, hopelessly plunged into anarchy, poverty, wars and chaos. So wide apart, these worlds will continue to develop in relative isolation because the affluent and democratic world does not feel to be threatened by the other and is not very interested in it; nor does it have illusions concerning the ability to influence it with economic assistance, armed intervention or imposed the peace. Indeed, the West's attitude to the ex 3rd World's development until September 11 resembled the picture portrayed by the authors. Even the intervention in Yugoslavia followed a prolonged period of hesitation and apparent lack of interest on the part of rich and powerful countries. Let us recall the particularly tragic case of Rwanda, where the West could have easily prevented genocide. The dramatic decline in economic aid from the United States to developing countries in the 1990s was part of that logic.

The separation of the two worlds was an illusion, however; anarchy and violence forced their way into the heartland of the developed world by virtue of information, mass illegal immigration, drugs, arms trade and organized crime. September 11 was a final blow to such an illusion: the superpower of all times was attacked by terrorists controlled from the non-existing, as a modern state Afghanistan.

The visions of a world plunging into chaos can be found in essays by a German poet and essay writer, Hans Magnus Enzensberger.⁵ The whole world is for him a scene of a civil war, global and molecular at the same time. He places on the same level both the bombing of Sarajevo and racial unrest in Los Angeles, tribal wars, organized crime and urban violence in the developed world. Conflicts are no longer ideological but tribal, nationalistic, xenophobic or criminal. A thin coat of fanaticism covers hatred and violence directed equally against oneself and the strangers.

The once influential visions of accelerated world disintegration processes are presented by Robert D. Kaplan.⁶ He discerns a similarity between developments in today's West Africa and in Europe during the thirty-year war. The chaos, crawling anarchy and general degeneration in Africa were a compounded effect of the end of colonial rule, the collapse of puppet governments, environmental crisis,

demographic explosion, illnesses, mass migrations and chaotic tribal warfare. Kaplan predicted a similar development on the Indian sub-continent, in Middle East, Latin America and in the vast territories of post-Soviet Asia.

This proliferation of a new anarchy makes no sense, it has no readily discernible goals and objectives, clear motivation or moral justification. One can easily pinpoint the motivations driving the protagonists of the thirty-year war; even the war in Yugoslavia had clear objectives, even though the form and force of Serbian nationalism appear to be absurd and anachronistic in contemporary Europe. In the world described by Kaplan we face a chaotic disintegration of societies resulting in the destruction of people and their man-made and natural environment. This is a reversal of the image depicted by Fukuyama and many globalists. It is not the United States and the West in general that are a future for the whole world; the future of the world can be rather seen, according to Kaplan, in the tragedies of Rwanda, Sierra Leone, Liberia, Guinea or Zaire, where society is racially polarized, fragmented, where crime and violence are on the rise, where the moral fiber and social bonds are almost extinct, where armed to the teeth and culturally uprooted, human being creates a lunar moral landscape.

As I wrote earlier, the illusions of the possible isolation of the rich and secure North from the Hobbsonian chaos and misery of the South, disappeared after September 11. The danger of weapons of mass destruction and their potential use by terrorists or "roge" states against America or generally against the West, paradoxically contributed to the reunification of the world.

The understanding of common threats, the overlap of the two worlds, the problems of global violence and terror, which makes the frontiers between war and peace disappear, forces one to look for security in most insecure places. We do not know yet the results, but it was in the search for security that America conquered Afghanistan and then Iraq. In addition, Washington has abandoned the until recently endorsed doctrine of no engagement in internal affairs of other countries, refusal to participate in "state" or "nation building" endeavors in anarchized regions of the world.

It is often said that nothing has really changed after September 11, 2001. In the next breath, we hear that everything has changed. In fact, both statements are true. Nothing has changed in the sense that

terrorist attacks have simply sharpened the focus on the new geopolitical landscape shaped by the collapse of Communism. Everything has changed because America's response to this unipolar world order was transformed by the brutal invasion of its homeland. The world lives now with an America determined, in the name of its own security, to assert itself anywhere and everywhere. The isolationist has become the unilateralist.

Europe's view of the world remains essentially different from that of the Bush administration. What unites Europeans is more important than what divides them now. All European countries share the conviction that the security of the world depends ultimately on an even-handed international system binding the strongest as well as the weakest to a set of rules. Divided over Iraq, Europe is united in its concern to draw a line between American leadership and the new world order based on U.S. unrestrained hegemony.

The U.S. administration's answer to the chaos of the 90s and the threat to U.S. security was to take as a model for a new World Order the real success of the U.S. after World War II with the instauration of a liberal order in post Nazi Germany, in Japan and, after 1989, in post-Soviet East Central Europe. Germany, Japan and Soviet Russia were forced to give up by the war and armament. The objective now is to transform the Middle East in a similar way. The use of arms and of pre-emptive strategy is even easier in the asymmetric wars where the victor can be only one. A revolutionary transformation of the world by hegemonic power in order to make it "safe for democracy" and for the global market seems to be a real objective of a new hegemonic power. To assure the "end of history" Hegel, Kojev and Fukuyama are to be helped by the imperial might.

A Few Final Remarks

These three types of views of the paradigms and tendencies in international relations may be supplemented by an always ample, though different, category of black utopias about the future of the world. In the past, the threat of annihilation was often associated with a nuclear bomb or other means of mass destruction; threat was seen as a function of environmental damage or simply to mindless conflicts which could jeopardize the human race. A whole series of black visions associated the threat of human destruction with

sions associated the threat of human destruction with totalitarian regimes. The nature of apocalyptic literature has changed in recent years. It has more often been written by scientists, scholars and journalists rather than writers. Several versions of prophecies about the end of the human race have been put into circulation. For example, Francis Fukuyama once again has returned to his prophecy of "The End of History" ten years later. He is now questioning some major conclusions of his article. The concept of "The End of History" was based, says Fukuyama, on the assumed invariability of human nature. From today's perspective, the social engineering in the past century, from socialization in childhood, through psychoanalysis, labor camps to totalitarian propaganda, was too primitive to significantly modify human nature. The situation has changed radically with the advent of modern biotechnology and genetic engineering; a new revolution has begun in the area of managing social behaviors. Today, science allows a radical and lasting modification of human nature, thus a human being may open a new chapter of his history. Peter Sloterdijk, a German philosopher, goes even further and heralds the emergence of an "anthropo-technological" being, united into one operating system with an information management system integrating the man and his tools.

Bill Joy, co-architect of the Internet revolution, former chair of the presidential Information Technology Commission in the US, published a dramatic warning in 2000 against the impacts of concurrent development of robotics, micro-machines and genetics. In an article under a revealing title "Does the Future Need Us?" he identifies a risk that machines capable of breeding and self-improving may take over control over humans.

Apocalypse has a double nature in Christian tradition: fear, calamity and destruction ought to be followed by salvation and redemption. The expectation of it has helped carry the burden of life for millennia. Today, we are facing an increasingly wide-spread existential fear but without *catharsis*, without hope or faith in redemption.

In the "*Untimely Meditations*," Nietzsche wrote about an everlasting longing of man for life without fear, for a world of stability and peace. This world was to be symbolized by an image of mindlessly grazing cows.

There is a great dream in that bovine metaphor by Nietzsche: of conquering time and related fear, suffering and death. Eternity offers

solace by invalidating time. Hundreds of books and articles have been written recently on how modern man has overcome time and space. This is what contemporary globalization is all about! The speed of communication makes it possible for us to observe and even participate in developments occurring thousands of miles away (e.g., stock market) in real time. Safely protected by the distance and the glass of the monitor, we can witness first hand tragic events, be global watchers, ambiguous characters of the twentieth-century history, dropped by fate next to the executioner and the victim.

Our control over time and space supported by technology has nothing to do with the philosopher's thoughts inspired by the image of cows. This, let us call it, *horizontal* overcoming of time and space makes us more than before subjected to the daily pressure of images of atrocities, despair and human misery. Surely, technology cannot make time irrelevant for us, nor can it solve moral problems that we face daily, although quite often it promises to remove them. Globalization, as I wrote beforehand, has no moral content in itself, but it creates enormous moral challenges. We know and we see that there are others there on the earth. We see their tragedies, their suffering, their anger, their violence. What is to become of all this? A great chaos, a true apocalypse? Maybe. Because it will be more and more difficult to tolerate the screaming injustice of the coexistence of such different worlds in our world. But maybe—the light of hope can be seen here and there—the feeling of physical proximity, imposed by the elimination of temporal and special distance, will contribute to the appearance of a stronger sense of brotherhood and shared responsibility for our common fate.

Well, I know, this is not a very satisfying conclusion. But looking at our recent past, I cannot find many more sources of global optimism. I know that it says more about me, maybe about our capacity to look into the future. Quite possibly, it says something about our transitory period and the global uncertainties it created. Alexander Herzen, a prominent Russian democrat and émigré fleeing nineteenth-century tyranny, noted down words which are captivating today: "The demise of current forms of social life should make one happy rather than anxiously concerned. However, it is horrible that the world which is disappearing is not leaving behind an heir but a pregnant widow. Between the death of one and the birth of another, much water will flow by and a long night of chaos and desert will elapse."

Notes

- 1 Ken Jowitt, "Rage, Hubris, and Regime Change," *Policy Review*, no. 118.
- 2 Jean Marie Guehenno, *La fin de la democratie* (Paris: Flammarion, 1993).
- 3 See Kenichi Ohmae, *The End of the Nation State: The Rise of Regional Economies* (New York: The Free Press, 1995).
- 4 See Max Singer and Aaron Wildavsky, *The Real World Order: Zones of Peace / Zones of Turmoil* (New York: Chatham House, 1993).
- 5 Hans Magnus Enzensberger, *Aussichten auf den Bürgerkrieg* (Frankfurt am Main: Suhrkamp, 1993).
- 6 Robert D. Kaplan, *The Ends of the Earth: A Journey at the Dawn of the 21st Century* (New York: Random House, 1996).

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